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bcc

Subject Draft Voting Fraud and Voter Intimidation Report

History: This message has been replied to

Commissioners and Tom,

I have attached a draft version of the EAC Voting Fraud and Voter Intimidation report. **Please have your comments ready no later than Tuesday , Nov. 28, COB, so that I will be prepared to discuss them at our briefing on Wednesday , Nov. 29 at 10:30.**

You will note that there are appendixes referenced in the report. These documents are quite lengthy. Thus, I did not attach them to this email. If, however, you want to read the documents, DeAnna has access to them in my absence and can either email them to you or print them for you.

I think that the report is fairly self-explanatory. However, there are two questions that we need to address and that the Commissioners need to comment on:

1. The consultants provided summaries of articles, books, and reports that they read, as well as summaries of the interviews that they conducted. Peggy created two tables summarizing the consultants' summaries of books, article and reports as well as interviews. We need to make a determination of which summaries we want to attach as appendixes. The only issue that I am aware of (and I have a question pending to Peggy about the quality of these summaries) is a significant disagreement over the summaries of interviews with Craig Donsanto and John Tanner of the Dept. of Justice. They disagree with the characterization given by the consultants to what they said in the interview. Obviously, this matter would have to be resolved if we decide to use the consultants' summaries.

2. Tom and I had a conversation with Tova and Job about the fact that we are going to issue a report. Tova was quite insistent about being able to see the report before it is released. I am NOT inclined to give her a copy of the report before it is released. Neither Tova nor Job are still on contract with the EAC. Thus, they are just like any other member of the public. I believe that if we release it to them, then we may have a significant problem withholding the document from others that may ask for it via FOIA request. I believe that the course of action should be to release it to all persons simultaneously.

Happy reading and Happy Thanksgiving!



Voter Fraud & Intimidation Report.doc

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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.

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".

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.

- 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 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

**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,

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;

- 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.”

## **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

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.

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.

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)

025932

Juliet E. Hodgkins/EAC/GOV  
11/29/2006 05:35 PM

To Paul DeGregorio/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
bcc

Subject Revised - Draft – Voting Fraud/Voter Intimidation Report

Attached is a revised version of the Voting Fraud/Voter Intimidation Draft Report. The changes that Commissioner Hillman suggested have been made and highlighted in yellow. See pages 10-11.

Peggy and I are working on the revision of the Donsanto and Tanner interview summaries and will forward that to you under a separate email.



Voter Fraud & Intimidation Report - 112906.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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025936

**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 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.

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 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".

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.



- 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 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

**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,

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 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 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.

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.

### **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.

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.

### **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;
- 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. 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.

### ***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 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.



Juliet E. Hodgkins/EAC/GOV  
12/01/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc

Subject Draft Fraud/Intimidation Report with Executive Summary

Commissioners,

The draft attached below contains the Executive Summary as well as the suggestions made by Commissioner Hillman. Please let me know if you have any additional changes by COB Monday, Dec. 4, so that I can incorporate these and have this document ready for consideration at Thursday's meeting.



Voter Fraud & Intimidation Report - 120106.doc

In addition, I have had another request from Tova Wang for an embargoed copy of this report. I have not heard from any of you on this matter. I assume that this means that you agree with my opinion that we cannot release this document to her since she is no longer under contract with us, as it would be tantamount to releasing this document to the public. Please let me know ASAP if this is not your understanding and belief.

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

025953

**EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY****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.

## 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.

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 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.

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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".

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.

- 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 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



**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**

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 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 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.

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.

### **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.

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:

### **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;
- 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. 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.

### ***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 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.

**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).



Gracia Hillman/EAC/GOV

12/04/2006 12:52 PM

To Juliet E. Thompson/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Fraud Report Executive Summary

Attached are my suggested edits to the Executive Summary. (I am still reviewing the report and may comment on other sections.)



EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY.doc

025975

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

**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, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, charges filed, and final disposition of each complaint.

**Comment [GH1]:** Ethical provisions of what?

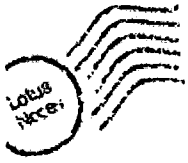
**Comment [GH2]:** We should learn about all complaints received by election officials, not just those received through the admin complaint process.

**Deleted:** through their administrative complaint processes

**Comment [GH3]:** Our study should also include final disposition of each case where charges were filed.

**Deleted:** and





Gracia Hillman/EAC/GOV

12/04/2006 01:49 PM

To Juliet E. Thompson/EAC/GOV@EAC

cc pdegregorio@eac.gov, Ddavidson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Edits to the Fraud Report

I offer edits to two sections of the report, on pages 14 and 19. Please see the attached one pager. I did a copy and paste of the two sections rather than resending back to you the entire report.



What is not an Election Crime for Purposes of this Study.doc

025977

**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."

.....

Comment [GH1]: Ethical provisions of what?


***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. The data collected will also include complaints that have been filed outside of the administrative complaint procedures. 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.

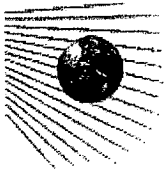
Comment [GH2]: We can be pretty certain that legitimate complaints will be filed outside of the Admin Complaint Procedure.

Juliet E. Hodgkins/EAC/GOV  
12/04/2006 01:49 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fraud report 

I assume that you saw Gracia's comments. I accepted them and added one or two words to clarify one point.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



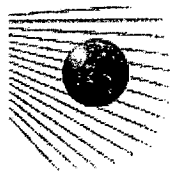
Paul DeGregorio /EAC/GOV  
12/04/2006 01:42 PM

To Juliet E. Thompson/EAC/GOV  
cc  
Subject Fraud report

Julie,  
I looked over your changes and they look fine with me. I'll trust your judgement on the final product we receive on Thursday. If any policy or major changes are made by other commissioners, let me know.  
Thanks.  
Paul

-----  
Sent from my BlackBerry Wireless Handheld

025979



Paul DeGregorio /EAC/GOV

10/18/2005 04:56 PM

To Juliet Thompson, Thomas R. Wilkey (EAC)

cc

bcc

Subject Fw: Research Grants

I am not sure you received this e-mail from Hans (it wasn't clear on the to: list).

Paul DeGregorio  
Vice Chairman  
US Election Assistance Commission  
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Suite 1100  
Washington, DC 20005  
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www.eac.gov

— Forwarded by Paul DeGregorio/EAC/GOV on 10/18/2005 04:56 PM —



"Hans.von.Spakovsky@usdoj.gov"

<Hans.von.Spakovsky@usdoj.gov>

10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
"rmartinez@eac.gov" <rmartinez@eac.gov>,  
"pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>,  
"ddavison@eac.gov" <ddavison@eac.gov>  
cc "christophert@michigan.gov"  
<christophert@michigan.gov>, "bkaufman@cco.hctz.net"  
<bkaufman@cco.hctz.net>, "dlewis@electioncenter.org"  
<dlewis@electioncenter.org>, "tjsthree@msn.com"  
<tjsthree@msn.com>, "wrklinerjr@mindspring.com"  
<wrklinerjr@mindspring.com>

Subject Research Grants

Dear Commissioners:

On August 18 I sent you an email raising serious concerns over the awarding of a contract to the Moritz College of Law given its clearly demonstrated pre-existing opinions about provisional balloting and voter identification. Unfortunately, nothing was apparently done about this situation.

I have just learned that a similar situation has occurred. I understand that another research grant has been awarded to Tova Wang for research into "voter fraud and voter intimidation." Ms. Wang has an even more pronounced partisan and one-sided view of these issues than was present in the situation involving Moritz College. She has many posted opinions available on the Internet that make it clear that she will not be able to conduct research in an objective fashion on these issues. Just a few examples illustrate this:

"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.'"

"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."

"...voters are individually disenfranchised by continued, often race based, voter intimidation and deceptive practices..."

Carter-Baker Report: Some Bad Fixes for the Wrong Problem, 9/19/2005

"The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities...Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?"

Voter ID and Fraud: Prove It, 7/28/2005

There are numerous more examples of her partisan opinions and attacks and demonstrably false claims against Republicans and election officials in general, such as her baseless charge in another article that "partisan election officials and party leaders usurped the process and manipulated the new federal voting law in ways that disenfranchised voters." Election 2004: A Report Card, 1/1/2005. The idea that she will write an objective report on issues that she has already expressed such strong opinions on ("there is no evidence that such election fraud is a serious problem") is hard to accept. I find it surprising that the EAC would award her a research grant or expect that election officials around the country would accept as valid a report written by an individual who asserts that "[a]t every step of the way, election officials in key states threw up unnecessary barriers to voting." Id. This gratuitous remark is an insult to the many hard-working election officials that we all know through our work who did everything they could during the last election to improve the election process and in large part succeeded.

Whatever procedures the EAC has set up to screen individuals and entities applying for research grants is obviously not working. I have no doubt that I could today, based on reading Ms. Wang's prior opinions, predict exactly what her report will conclude on the issues of voter fraud and voter intimidation. This situation needs to be corrected so that research is not being conducted by partisan individuals with preset opinions and views on issues. As with my prior email, I strongly recommend that the EAC reconsider the awarding of this contract.

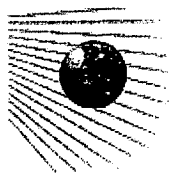
Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice

025931

950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

025982



Paul DeGregorio /EAC/GOV

10/18/2005 05:17 PM

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

bcc Juliet E. Thompson/EAC/GOV

Subject Re: Research Grants

Hans,

I wish you would have shown us the decency to have spoken to someone at the EAC before you sent this e-mail. Had you done so, you might have discovered that Ms. Wang was paired with Job Serebrov, a conservative attorney who, like you, has served on a local election board (Washington, Co, AK -Fayetteville). He has also worked on voting issues and election law in his practice, including voter fraud. He was counsel to the Arkansas GOP on ballot integrity issues and was the ballot protection specialist for Mike Hucabee in his campaign for Lt. Governor. In addition, Job formed and ran "Arkansans for Fair Elections", a non-partisan group that looked to investigate and prevent voter fraud issues. He headed that group for 8 years. Job served the Republican Party of Arkansas as the Chairman of the Committee for the Revision of the State Constitution.

Thor Hearne called me last week to indicate that Job had called him to be on the working group that Job and Ms. Wang are putting together to look at the voter fraud/voter intimidation issues.

Job was recommended to the EAC for this work by Julie Thompson. His references included two US 8th Circuit judges appointed by GOP presidents: Morris Arnold and Lavenski Smith.

You may recall that the Advisory Board made it clear to the EAC that they thought the Voter Fraud/Voter Intimidation issues should be studied together. That's why Ms. Wang has been paired with Mr. Serebrov to do this study.

Julie tells me that she had a wide-ranging discussion with you last week but you never brought this issue up. It's too bad, as it may have prevented you from sending an e-mail to so many people that contains only half the story.

Paul DeGregorio  
Vice Chairman  
US Election Assistance Commission  
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"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>



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

10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
"rmartinez@eac.gov" <rmartinez@eac.gov>,  
"pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>,  
"ddavison@eac.gov" <ddavison@eac.gov>  
cc "christophert@michigan.gov"

025983



<christophert@michigan.gov>, "bkaufman@cco.hctz.net"  
<bkaufman@cco.hctz.net>, "dlewis@electioncenter.org"  
<dlewis@electioncenter.org>, "tjsthree@msn.com"  
<tjsthree@msn.com>, "wrklinerjr@mindspring.com"  
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Subject Research Grants

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"The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities...Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?"

Voter ID and Fraud: Prove It, 7/28/2005

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025984



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Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

025985

Thomas R. Wilkey/EAC/GOV  
10/18/2005 06:26 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Research Grants

Yes Ray has already called him to remind him that TWO people are working on the project and he obviously didn't finish reading the entire sentence in the Electionline report

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio

**From:** Paul DeGregorio  
**Sent:** 10/18/2005 04:56 PM  
**To:** Juliet Thompson; Thomas Wilkey  
**Subject:** Fw: Research Grants

I am not sure you received this e-mail from Hans (it wasn't clear on the to: list).

Paul DeGregorio  
Vice Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
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pdegregorio@eac.gov  
www.eac.gov

— Forwarded by Paul DeGregorio/EAC/GOV on 10/18/2005 04:56 PM —



"Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
"rmartinez@eac.gov" <rmartinez@eac.gov>,  
"pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>,  
"ddavison@eac.gov" <ddavison@eac.gov>  
cc "christophert@michigan.gov"  
<christophert@michigan.gov>, "bkaufman@cco.hctz.net"  
<bkaufman@cco.hctz.net>, "dlewis@electioncenter.org"  
<dlewis@electioncenter.org>, "tjsthree@msn.com"  
<tjsthree@msn.com>, "wrklinerjr@mindspring.com"  
<wrklinerjr@mindspring.com>  
Subject Research Grants

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025986

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"This stands in stark contrast to the entire tenor or 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."

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Voter ID and Fraud: Prove It, 7/28/2005

There are numerous more examples of her partisan opinions and attacks and demonstrably false claims against Republicans and election officials in general, such as her baseless charge in another article that "partisan election officials and party leaders usurped the process and manipulated the new federal voting law in ways that disenfranchised voters." Election 2004: A Report Card, 1/1/2005. The idea that she will write an objective report on issues that she has already expressed such strong opinions on ("there is no evidence that such election fraud is a serious problem") is hard to accept. I find it surprising that the EAC would award her a research grant or expect that election officials around the country would accept as valid a report written by an individual who asserts that "[a]t every step of the way, election officials in key states threw up unnecessary barriers to voting." Id. This gratuitous remark is an insult to the many hard-working election officials that we all know through our work who did everything they could during the last election to improve the election process and in large part succeeded.

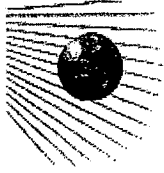
Whatever procedures the EAC has set up to screen individuals and entities applying for research grants is obviously not working. I have no doubt that I could today, based on reading Ms. Wang's prior opinions, predict

exactly what her report will conclude on the issues of voter fraud and voter intimidation. This situation needs to be corrected so that research is not being conducted by partisan individuals with preset opinions and views on issues. As with my prior email, I strongly recommend that the EAC reconsider the awarding of this contract.

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

025988



Paul DeGregorio/EAC/GOV

10/25/2005 05:07 PM

To Karen Lynn-Dyson

cc

bcc

Subject Fw: Research Grants

see e-mail traffic below

— Forwarded by Paul DeGregorio/EAC/GOV on 10/25/2005 05:07 PM —



"Hans.von.Spakovsky@usdoj.gov"

<Hans.von.Spakovsky@usdoj.gov>

10/19/2005 09:49 AM

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

cc

Subject RE: Research Grants

perhaps if the Board of Advisors were kept better informed, I would not have been put into this position.

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

From: pdegregorio@eac.gov [mailto:pdegregorio@eac.gov]

Sent: Tuesday, October 18, 2005 5:18 PM

To: von Spakovsky, Hans (CRT)

Subject: Re: Research Grants

Importance: High

Hans,

I wish you would have shown us the decency to have spoken to someone at the EAC before you sent this e-mail. Had you done so, you might have discovered that Ms. Wang was paired with Job Serebrov, a conservative attorney who, like you, has served on a local election board (Washington, Co, AK -Fayetteville). He has also worked on voting issues and election law in his practice, including voter fraud. He was counsel to the Arkansas GOP on ballot integrity issues and was the ballot protection specialist for Mike Huckabee in his campaign for Lt. Governor. In addition, Job formed and ran "Arkansans for Fair Elections", a non-partisan group that looked to investigate and prevent voter fraud issues. He headed that group for 8 years. Job served the Republican Party of Arkansas as the Chairman of the Committee for the Revision of the State Constitution.

Thor Hearne called me last week to indicate that Job had called him to be on the working group that Job and Ms. Wang are putting together to look at the voter fraud/voter intimidation issues.

Job was recommended to the EAC for this work by Julie Thompson. His references included two US 8th Circuit judges appointed by GOP presidents: Morris Arnold and Lavenski Smith.

You may recall that the Advisory Board made it clear to the EAC that they thought the Voter Fraud/Voter Intimidation issues should be studied together. That's why Ms. Wang has been paired with Mr. Serebrov to do this study.

025989

Julie tells me that she had a wide-ranging discussion with you last week but you never brought this issue up. It's too bad, as it may have prevented you from sending an e-mail to so many people that contains only half the story.

Paul DeGregorio  
Vice 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

"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To

"gmhillman@eac.gov" <gmhillman@eac.gov>, "rmartinez@eac.gov" <rmartinez@eac.gov>, "pdegregorio@eac.gov" <pdegregorio@eac.gov>, "jthompson@eac.gov/twilke", "ddavison@eac.gov" <ddavison@eac.gov>

cc

"christophert@michigan.gov" <christophert@michigan.gov>, "bkaufman@cco.hctz.net" <bkaufman@cco.hctz.net>, "dlewis@electioncenter.org" <dlewis@electioncenter.org>, "tjsthree@msn.com" <tjsthree@msn.com>, "wrklinerjr@mindspring.com" <wrklinerjr@mindspring.com>

Subject

Research Grants

Dear Commissioners:

On August 18 I sent you an email raising serious concerns over the awarding of a contract to the Moritz College of Law given its clearly demonstrated pre-existing opinions about provisional balloting and voter identification. Unfortunately, nothing was apparently done about this situation.

I have just learned that a similar situation has occurred. I understand that another research grant has been awarded to Tova Wang for research into "voter fraud and voter intimidation." Ms. Wang has an even more pronounced partisan and one-sided view of these issues than was present in the situation involving Moritz College. She has many posted opinions available on the Internet that make it clear that she will not be able to conduct research in an objective fashion on these issues. Just a few examples illustrate this:

025990

"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.'"

"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."

"...voters are individually disenfranchised by continued, often race based, voter intimidation and deceptive practices..."

Carter-Baker Report: Some Bad Fixes for the Wrong Problem, 9/19/2005

"The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities...Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?"

Voter ID and Fraud: Prove It, 7/28/2005

There are numerous more examples of her partisan opinions and attacks and demonstrably false claims against Republicans and election officials in general, such as her baseless charge in another article that "partisan election officials and party leaders usurped the process and manipulated the new federal voting law in ways that disenfranchised voters." Election 2004: A Report Card, 1/1/2005. The idea that she will write an objective report on issues that she has already expressed such strong opinions on ("there is no evidence that such election fraud is a serious problem") is hard to accept. I find it surprising that the EAC would award her a research grant or expect that election officials around the country would accept as valid a report written by an individual who asserts that "[a]t every step of the way, election officials in key states threw up unnecessary barriers to voting." Id. This gratuitous remark is an insult to the many hard-working election officials that we all know through our work who did everything they could during the last election to improve the election process and in large part succeeded.

Whatever procedures the EAC has set up to screen individuals and entities applying for research grants is obviously not working. I have no doubt that I could today, based on reading Ms. Wang's prior opinions, predict exactly what her report will conclude on the issues of voter fraud and voter intimidation. This situation needs to be corrected so that research is not being conducted by partisan individuals with preset opinions and views on issues. As with my prior email, I strongly recommend that the EAC reconsider the awarding of this contract.

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General

025991


Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839





**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)

025993



Amie J. Sherrill/EAC/GOV  
11/04/2005 11:42 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Tally Vote - Tova Wang contract

 Tova Wang resume.pdf  Communication of Award - EAC 05-66.pdf  EAC 05-66 Voting Fraus & Voter Intimidation Contract Info.pdf  
 Memo for the record - EAC 05-66.pdf  SOW EAC 05-66 Voting Fraud & Voter Intimidation.pdf  
 Tally Vote - Vote Fraud & Voter Intimidation 9.16.05.pdf  Tally vote cover - Tova Wang.pdf  Tally Vote Memo - Tova Wang.pdf

Amie J. Sherrill  
Special Assistant to Vice Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

Tova Andrea Wang  
201 West 74<sup>th</sup> Street, Apt. 11F  
New York, NY 10023  
(212) 362-5223

**BAR ADMISSION:** New York

**EDUCATION**

**NEW YORK UNIVERSITY SCHOOL OF LAW, New York, N.Y.**  
J.D., May, 1996

**BARNARD COLLEGE, COLUMBIA UNIVERSITY, New York, N.Y.**  
B.A. in Political Science, *magna cum laude*, May, 1991; GPA: 3.8

**EXPERIENCE**

**THE CENTURY FOUNDATION, New York, N.Y.**

Senior Program Officer and Democracy Fellow: March, 2001 – Present

Research, write, and publish reports, provide commentary to national and state press, provide expertise to policymakers, give expert testimony and speak before groups around the country on election reform and voting rights, in addition to other civil liberties issues. Currently serve as the Executive Director of The Century Foundation's Post-2004 Election Reform Working Group, comprised of preeminent election law scholars from across the country. Served as staff person to the National Commission on Federal Election Reform, co-chaired by former Presidents Carter and Ford, of which The Century Foundation was a co-sponsor.

**THE KAMBER GROUP, New York, N.Y.**

Deputy Director of Public Policy: August, 1998 – March, 2001

Formulated and drafted public policy ideas, provided policy research and analysis, and provided general strategic political consulting services to non-governmental organizations, political campaigns, elected officials and grassroots organizations. Conducted lobbying and public advocacy campaigns.

**NEW YORK CITY PUBLIC ADVOCATE, Investigation Into Police Misconduct, New York, N.Y.**

Deputy Director and Director of Policy: January, 1999 – July, 2000

Conducted all policy analysis and research, including evaluating programs and policies of the NYPD and police departments across the world. Developed policy proposals, conducted briefings, and wrote reports. Helped manage collection of quantitative and qualitative data, expert interviews, hearings, budgeting and fundraising.

**INDEPENDENT POLICY/POLITICAL CONSULTANT: August, 1996 – August, 1998,**  
New York and Washington, D.C.

Advised on policy, politics, legislation, and public relations for Reverend Jesse Jackson, the Children's Defense Fund, and the Academy of Political Science.

**AMERICAN JOURNAL OF INTERNATIONAL LAW, New York, N.Y.**

Assistant to the Editor-in-Chief, Theodor Meron: September, 1995 - May, 1996

Researched, edited and assisted in writing articles and speeches on current issues in international human rights law.

**U.S. DEPARTMENT OF JUSTICE, Executive Office for Immigration Review, New York, N.Y.**

Legal Intern: June - August, 1995

Researched and wrote immigration court decisions in political asylum, deportation and exclusion cases.

**CLINTON FOR PRESIDENT CAMPAIGN, New York, N.Y.**

Manhattan Field Director: February - July, 1992

Coordinated all campaign field operations in Manhattan. Negotiated the support of elected officials and political

leaders; conducted outreach to community organizations; mobilized and managed activities of 1000 volunteers.

**ACTIVITIES/ASSOCIATIONS**

Member, Election Law Committee, Association of the Bar of the City of New York

Member, State Affairs Committee, Citizens Union of New York

Member, Make Votes Count Committee, Citizens Union of New York

Founding member, American Constitution Society – New York



**U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005**

**MEMORANDUM FOR THE RECORD**

**Date: November 1, 2005**

**From: Karen Lynn Dyson**

**Re: Communication of Award of Contracts EAC 05-66 and EAC 05-67, Personal Services Contracts with Tova Wang and Job Serebrov**

In late August and early September 2005 a series of emails and phone calls were exchanged with Job Serebrov and Tova Wang in order to communicate the details of personal services contracts that were awarded to them. The substance of these e-mails and phone calls related to Mr. Serebrov and Ms. Wang's contracts, described the various services they would perform for EAC related to researching and possibly developing a future project that would study and analyze voting fraud and intimidation. These emails included transmitting a statement of work that would govern their work as well as emails and phone calls to establish a kick-off meeting that would provide information to them so that Mr. Serebrov and Ms. Wang could begin work.

Since that time, Ms. Wang and Mr. Serebrov have engaged in substantial work on this project. This has included developing, outlining and providing to EAC staff, a work plan for the project, meeting and conversing with one another to discuss the focus and work of the project, interviewing prospective persons who would serve on the project's review panel and presenting this initial list of persons to the EAC to be considered as members of this project review panel who would assess and review the project's work.

**EAC CONTRACT #05-66 Consulting Services to Assist EAC  
in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to 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. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). As a result of this unique relationship, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information, travel and conduct. All research, information, documents and any other intellectual property, (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express permission of the EAC.

**Supervision and Management.**

The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist. Ms. Sims will provide taskings, and supervise, review and approve all work and performance.

### **Period of Appointment, Compensation and Travel.**

The period of appointment under this contract is estimated at six months. The appointment shall constitute intermittent appointment (without a regularly scheduled tour of duty) per 5 C.F.R. §340.401(b). The consultant shall not incur overtime. The consultants shall not receive automatic adjustments of pay based upon 5 U.S.C. 5303. The consultants are not eligible for sick and annual leave, nor compensation for work performed on federal holidays. The Consultant is expected to work 450 hours during the estimated six month appointment period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week. The consultant shall be paid at a rate of \$111 per hour. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. The project at issue is sought to be completed within the sixth month period. The period of appointment shall continue until the project, outlined below, is completed.

Consultant's duty station shall be his/her home or place of business. The consultant has access to and shall supply common office equipment to include telecommunications, internet, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word and Excel). Other resources will be provided by the EAC as needed and at its discretion.

The Consultant is required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC per Federal Travel Regulations and EAC policy. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel.

### **Areas of Responsibility**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
2. Using the description developed above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. Work in consultation with other 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 Working Group will be provided with the results of the consultant's research (discussed in 1 and 2, above) as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.

4. The consultant shall be 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 research resulting from this effort.
5. Should the EAC decide to pursue one or more of the recommendations made in the report noted above, the consultant will be responsible for defining the appropriate project scope(s) and preparing Statement(s) of Work sufficient for use in a competitive procurement.

**Compensation Procedures**

Compensation shall be made for work done by submitting invoices. Invoices shall be submitted on a monthly basis. These invoices shall state the number of labor hours that have been expended. Invoices shall be delivered to Ms. Margaret Sims for review and Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005. Compensation for travel shall be submitted by travel voucher consistent with federal travel regulation and EAC requirements.

**Termination**

This consultant contract can be terminated without cause in advance of the current end date by two weeks' notice in writing by either of the parties.

**Estimated Project Timetable.**

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD





**U.S. ELECTION ASSISTANCE COMMISSION**  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**MEMORANDUM FOR THE RECORD**

**Date:**

**From: Gracia Hillman, Chair**  
**On Behalf of the Commission**

**Re: Ratification of Personal Services Contract with Tova Wang (EAC Contract No. 05-66; ACT No. E4019697)**

The purpose of this memorandum is to document the ratification of the above referenced agreement. Ratification is the process proscribed by the Federal Acquisition Regulation (FAR) to approve, by an official with the authority to do so, an agreement that was not binding on an agency because the Government representative who made it lacked authority to enter into the agreement on behalf of the government (unauthorized commitment). (FAR 1.602-3(a)).

**Background.** Information was brought to the attention of the Commission late in the week of October 10. This information suggested that communication of award for the above referenced agreement may not have been made by an individual with authority to bind the government. As such, the agreement may be viewed as an unauthorized commitment. The above referenced personal services agreement was to assist EAC in researching and developing a Fraud and Voter Intimidation Project. This was needed by the Commission in order to fulfill its research responsibilities under Sections 241(b)(6) and (7) of HAVA.

The Commission has considered Ms. Wang's qualifications and found her to be experienced in matters involving voter fraud and intimidation. (Attachment "1", Resume) In addition, the Commission has agreed to a six-month period of performance, from September 2005 through February 2006. (Attachment "2", Statement of Work). An award was made by full vote of the EAC Commissioners on September 19, 2005 (Attachment "3", Tally Vote Certification and Memorandum). The award was announced by the Commission on the record at a public meeting on September 27, 2005.

Prior to the time that the formal award was made by vote of the Commission, award was communicated by an EAC employee through a series of telephone calls and emails in early September 2005. (Attachment "4", Statement from Karen Lynn Dyson). Work began on the contract following award notification. This was evidenced by a kickoff meeting between EAC employees and the contractor which took place on September 7, 2005. Also, the contractor provided services in meeting with the other contractor engaged to provide similar assistance, developing a work plan for the voter fraud and intimidation project, interviewing and considering members to serve as a review panel for the work of the consultants on this project, and

026001

developing a preliminary list of panelists. (Attachment "4", Statement of Karen Lynn Dyson). Ultimately, ratification of this agreement will result in the Commission receiving all of the deliverables identified in the contract.

Funding was available in fiscal year 2005 (FY 05) for the services at issue. And, it appears based upon a review of the law that funding this contract from FY05 funds would be proper. These FY 05 funds remain available. The funds were in fact obligated to the agreement, in the amount of \$50,000.00 on September 21, 2005. This was done under the belief that a legal obligation had been created. The agreement approved for award by the Commissioners had a total estimated cost of \$50,000.00.

**Requirements.** FAR 1.602-3 (b) and (c) set federal ratification policy and requirements. These sections note:

- (1) Agencies should take action to prevent the need for ratification actions. Ratification procedures should not be used in a manner that encourages unauthorized commitments being made by government personnel.  
(FAR 1.602-3(b)(1)).
- (2) The head of an agency's contracting activity, unless the authority is designated higher, may ratify an unauthorized agreement. This authority may be delegated with limitations.  
(FAR 1.602-3(b)(2) & (3)).
- (3) Agencies should process unauthorized commitments consistent with FAR 1.602-3. Such actions should not be forwarded to the General Accounting Office for resolution unless they are subject to a Contracts Dispute Act Claim or are not otherwise ratifiable under the subsection. (FAR 1.602-3(b)(4)-(5) & (d)).
- (4) Consistent with FAR 1.602-3(c)(1)-(7), ratification authority may be exercised only when:
  - a. *Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;*
  - b. *The ratifying official has the authority to enter into a contractual commitment;*
  - c. *The resulting contract would otherwise have been proper if made by an appropriate contracting officer;*
  - d. *The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;*
  - e. *The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence; and*
  - f. *Funds are available and were available at the time the unauthorized commitment was made.*

**Analysis.** The commitment at issue began as a routine contracting effort. EAC, unlike many government agencies, has the express statutory authorization to enter into personal services contracts under 5 U.S.C. Section 3109. That authority is provided by the Help America Vote Act

Section 204(b). Section 3109 and the regulations promulgated by the Office of Personnel Management concerning personal services contracts allows these contracts only where a specific statute authorizes it and where it meets the terms as specified in the statute and regulation for type of appointment and rate of pay. The agreement with Ms. Wang appoints her in an intermittent capacity and establishes a rate of \$111 per hour, a rate which falls within the limits prescribed by 5 CFR Part 304.105.

In reviewing the fiscal law, it appears that the type of the contract is not dispositive as to whether the services provided by that contract are severable and must be funded in the fiscal year in which the services are rendered. While personal services contracts are generally considered severable (and payable in the fiscal year the work is performed), there must be an analysis of the nature of the work performed under the contract. The GAO Red Book, Vol. I sites one case which notes that legal administrative services were considered severable where there was no final report or final product produced from the contractual agreement. Another, case determined that substantive legal services procured from attorney's was non-severable. Thus, appears to be a distinction made between perennial, clerical work and substantive, project-based work. In the instant case, the consultant is providing project associated services that will result in a final report and final product in the form of a report and an RFP for a future study of voter fraud and voter intimidation.

Issues regarding the agreement's unauthorized nature arose near the end of the award process. While the contract authority (Commissioners) properly took action to make an award determination, they relied on EAC employees to communicate this fact to the contractor. In doing so, the Commission failed to realize that it is the communication of acceptance and award by the appropriate person that serves to obligate the government. EAC personnel seem to have viewed the Commissioners' concurrence as granting them the authority to communicate award in a manner that would obligate the agency. The bottom line is that the EAC employee believed her efforts to notify the contractor of award obligated the EAC by accepting the contractor's proposal. Based upon this, the contractor began performance on the agreement and the EAC has and will receive benefit.

Looking specifically at the requirements for ratification noted in FAR 1.602-3(c) and the facts outlined, above, the Commission finds:

- a. Services Accepted or Benefit Received. Services under this agreement have been accepted by the government. Moreover the government has and will obtain needed benefit from the services provided and upon completion of the unauthorized agreement.
- b. Contract Authority. The undersigned, as the chair of the EAC, has the authority to contract on behalf of the agency. Furthermore, the Chair's signature represents the decision of the full Commission to take this ratification action. This is documented by the attached Tally Vote. (Attachment "5", Tally Vote). EAC's four Commissioners have the legal authority to contract and otherwise bind the agency per the specific authority of the Help America Vote Act (42 U.S.C. §15325(e)) and, generally, as agency heads (see FAR 1.601).

- c. Contract Otherwise Proper. This agreement, having previously been initiated, processed, and awarded by full vote of the Commission was proper, but for the unauthorized communication of award made by an individual without authority to bind the agency. As stated previously, EAC is specifically authorized by statute to enter into personal services contracts. HAVA Section 204(b). This agreement falls within the statute and regulations governing personal services contracts. See specifically 5 U.S.C. 3109 and 5 CFR Part 304.
- d. Price Fair and Reasonable. The rate at which this contractor is providing services is within the amount allowable under 5 CFR Part 304.105. In addition, the contractor works regularly as Senior Program Officer and Democracy Fellow for The Century Foundation. The rate provided is commensurate with her regular rate for consulting services.
- e. Payment of Funds Recommended. After consultation with the General Counsel, the Commission recommends payment of funds.
- f. Funds Available. Consistent with the facts noted above, the Commission finds that funds are available and were available at the time of the unauthorized commitment.

**Prevention.** Unfortunately, there are a number of agreements which have suffered from the same deficiencies as discussed above. FAR 1.602(b)(1) makes it clear that agencies should take steps to prevent the need for ratifications and avoid using the process in a way that would encourage unauthorized commitments. The EAC must determine why these unauthorized commitments occurred and how to prevent them in the future. An initial review of EAC's contract process showed deficiencies in (1) the contracting procedure, (2) training of employees on contracting process and procedure, (3) coordination with the General Counsel's office, and (4) communication amongst contracting officers and staff that resulted in an unauthorized commitment. No new contracting should occur until issues surrounding the process have been resolved. EAC is in the process of negotiating with another government agency to handle its procurement process, thereby relieving the EAC staff of the responsibility of processing these procurements.

Gracia Hillman  
Chair  
On Behalf of the Commission

I Concur.

Juliet Thompson  
General Counsel

026004

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general "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:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must of have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

## Duties

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

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, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## Special Considerations

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

### Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$50,000 for labor. The consultant (s) is expected to work at least 450 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be for the consultant to work 20 hours per week. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A fixed price ceiling of \$5,000 has been allocated for reimbursement for travel and other allowable expenses.

### Invoicing

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

### Deliverables and Timetable

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan (Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and voter intimidation	TBD



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: September 16, 2005, 3:00PM

BALLOT DEADLINE: September 20, 2005, 3:00PM

COMMISSIONERS: HILLMAN, DEGREGORIO, MARTINEZ, DAVIDSON

SUBJECT: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

- ( ) I approve the recommendation.
- ( ) I disapprove of the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to DeAnna Smith. Please return the ballot no later than the date and time shown above.

FROM THOMAS R. WILKEY, EXECUTIVE DIRECTOR


026008





U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MEMORANDUM**

TO: EAC Commissioners Hillman, DeGregorio, Martinez, Davidson  
FROM:  Thomas Wilkey, EAC Executive Director  
DATE: September 16, 2005  
RE: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

**Background**

"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:

- (6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.
- (7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues, to determine how the EAC might respond to them, is a high priority.

The U.S. Election Assistance Commission (EAC) has identified two senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections. The consultants, whose contracts would run for the period September-February, 2005, would be responsible for helping the EAC identify what constitutes voting fraud and voter intimidation affecting Federal elections.

To accomplish this the consultants will: perform background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, along with a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations; in consultation with EAC, identify and convene, a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; develop an EAC project scope of work and a project work plan related to voting fraud and voter intimidation and; author a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation.

**Recommendation**

Attached is the Statement of Work for the voting fraud and voter intimidation project consultants. The consultant contract fees total \$110,000 (\$55,000 per person). An additional \$10,000 is allotted for the voting fraud and intimidation project working group. The total project amount is \$120,000.

026009



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: September 16, 2005, 3:00PM

BALLOT DEADLINE: September 20, 2005, 3:00PM

COMMISSIONERS: HILLMAN, DEGREGORIO, MARTINEZ, DAVIDSON

SUBJECT: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

- ( ) I approve the recommendation.
- ( ) I disapprove of the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 9-16-05

SIGNATURE: Donetta Davidson

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to DeAnna Smith. Please return the ballot no later than the date and time shown above.

FROM THOMAS R. WILKEY, EXECUTIVE DIRECTOR

026010



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** September 16, 2005, 3:00PM

**BALLOT DEADLINE:** September 20, 2005, 3:00PM

**COMMISSIONERS:** HILLMAN, DEGREGORIO, MARTINEZ, DAVIDSON

**SUBJECT:** Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

- I approve the recommendation.  
 I disapprove of the recommendation.  
 I object to the recommendation.  
 I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 9/16/05

SIGNATURE: Pam Martinez

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to DeAnna Smith. Please return the ballot no later than the date and time shown above.

FROM THOMAS R. WILKEY, EXECUTIVE DIRECTOR 

026011



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: September 16, 2005, 3:00PM

BALLOT DEADLINE: September 20, 2005, 3:00PM

COMMISSIONERS: HILLMAN, DEGREGORIO, MARTINEZ, DAVIDSON

SUBJECT: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

- I approve the recommendation.
- I disapprove of the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: September 18, 2005 SIGNATURE: Paul S DeGregorio  
signed by Ann Smith

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to DeAnna Smith. Please return the ballot no later than the date and time shown above.

FROM THOMAS R. WILKEY, EXECUTIVE DIRECTOR



Paul DeGregorio/EAC/GOV  
09/18/2005 04:38 PM

To Amie J. Sherrill/EAC/GOV  
cc Thomas R. Wilkey/EAC/GOV, Juliet E. Thompson/EAC/GOV,  
Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV  
bcc  
Subject Tally Votes

This is to authorize my Special Assistant, Amie Sherrill, to mark on my behalf the following Tally Votes regarding the awarding of contracts, as approving the staff recommendation for each of the following:

1. RFP #05-04 to the University of Florida Levin College of Law for the development of legal resources clearinghouse
2. RFP #05-07 to the Center for Public Policy and Administration of the University of Utah for the development of best practices on vote count and recount procedures
3. RFP #05-11 to Zimmerman Associates, Inc for the development of records management policies and procedures
- ~~4. Sole Source contracts to Job Serebry and Goya Wang in developing a EAC Voting Brand and Voter Information Program~~
5. Sole Source contract to the National Academies of Science for Technical Support for Statewide Registration Database Implementation with Online Forums for Discussion

Paul DeGregorio  
Vice 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

026015



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: September 16, 2005, 3:00PM

BALLOT DEADLINE: September 20, 2005, 3:00PM

COMMISSIONERS: HILLMAN, DEGREGORIO, MARTINEZ, DAVIDSON

SUBJECT: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

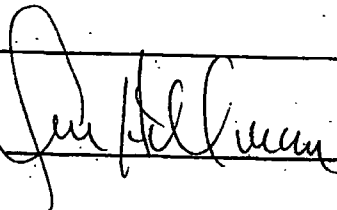
- I approve the recommendation.
- I disapprove of the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE: 9-17-05

SIGNATURE: 

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to DeAnna Smith. Please return the ballot no later than the date and time shown above.

FROM THOMAS R. WILKEY, EXECUTIVE DIRECTOR 

026014



**U.S. ELECTION ASSISTANCE COMMISSION**  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** November 3, 2005, 5:00PM

**BALLOT DEADLINE:** November 7, 2005, 5:00 PM

**COMMISSIONERS:** DEGREGORIO, HILLMAN, MARTINEZ, DAVIDSON

**SUBJECT:** Ratification of Personal Services Contract with Tova Wang  
(EAC 05-66).

- ( ) I approve the recommendation.
- ( ) I disapprove the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

**COMMENTS:** See the attached memo in support.

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**DATE:** \_\_\_\_\_ **SIGNATURE:** \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Benita Fundersburg. Please return the ballot no later than date and time shown above.

FROM JULIET THOMPSON, GENERAL COUNSEL

026015



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

MEMORANDUM

**TO:** Commissioners Hillman, DeGregorio, Martinez and Davidson

**FROM:** Juliet Thompson

**DATE:** November 1, 2005

**RE:** **Personal Services Contract with Tova Wang (EAC Contract No. 05-66; ACT No. E4019697)**

**BACKGROUND:**

On or about October 7, 2005, the Chair of the EAC requested that the Office of General Counsel review 19 contracts for procurement of goods and services. As a part of the review, we examined contract file documents and spoke with EAC staff and representatives involved in each stage of the contracting process.

In reviewing the contract with Ms. Tova Wang to provide services in researching and developing a voter fraud and intimidation project for EAC, we determined that the agreement had been entered through a legally permissible process, that a vote was taken by the Commission to award this agreement, that the award was communicated by an EAC staff member to Ms. Wang, work has begun under the agreement, and that EAC has and will receive a benefit from the provision of these services by Ms. Wang. The review revealed that the commitment was made by a person who was not the contracting officer of EAC and who was not authorized to make such commitment. Therefore, this agreement was made by a person who did not have the authority to bind the Commission. Because the contract was otherwise proper and EAC has and will continue to receive benefits from the completion of this contract, the agreement and facts surrounding it fit within the framework for ratification set forth in the Federal Acquisition Regulation (FAR).

Ratification is the process proscribed by the FAR to approve, by an official with the authority to do so, an agreement that was not binding on an agency because the Government representative who made it lacked authority to enter into the agreement on behalf of the government (unauthorized commitment). (FAR 1.602-3(a)).



## REQUIREMENTS FOR RATIFICATION:

FAR 1.602-3 (b) and (c) set federal ratification policy and requirements. These sections note:

- (1) Agencies should take action to prevent the need for ratification actions. Ratification procedures should not be used in a manner that encourages unauthorized commitments being made by government personnel. (FAR 1.602-3(b)(1)).
- (2) The head of an agency's contracting activity, unless the authority is designated higher, may ratify an unauthorized agreement. This authority may be delegated with limitations. (FAR 1.602-3(b)(2) & (3)).
- (3) Agencies should process unauthorized commitments consistent with FAR 1.602-3. Such actions should not be forwarded to the General Accounting Office for resolution unless they are subject to a Contracts Dispute Act Claim or are not otherwise ratifiable under the subsection. (FAR 1.602-3(b)(4)-(5) & (d)).
- (4) Consistent with FAR 1.602-3(c)(1)-(7), ratification authority may be exercised only when:
  - a. *Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;*
  - b. *The ratifying official has the authority to enter into a contractual commitment;*
  - c. *The resulting contract would otherwise have been proper if made by an appropriate contracting officer;*
  - d. *The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;*
  - e. *The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence; and*
  - f. *Funds are available and were available at the time the unauthorized commitment was made.*

## ANALYSIS:

The commitment at issue began as a routine contracting effort. EAC, unlike many government agencies, has the express statutory authorization to enter into personal services contracts under 5 U.S.C. Section 3109. That authority is provided by the Help America Vote Act Section 204(b). Section 3109 and Office of Personnel Management regulations implementing the statute allow personal services contracts only when they meet the terms specified in the statute and regulation for type of appointment and rate of pay. The agreement with Mr. Serebrov properly appoints him in an intermittent capacity and establishes a rate of \$111 per hour, a rate which falls within the limits prescribed by 5 CFR Part 304.105.

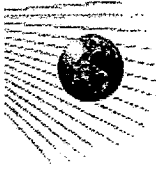
In reviewing the fiscal law, it appears that the type of the contract is not dispositive as to whether the services provided by that contract are severable and must be funded in the fiscal year in

which the services are rendered. While personal services contracts are generally considered severable (and payable in the fiscal year the work is performed), there must be an analysis of the nature of the work performed under the contract. The GAO Red Book, Vol. I sites one case which notes that legal administrative services were considered severable where there was no final report or final product produced from the contractual agreement. Another, case determined that substantive legal services procured from attorney's was non-severable. Thus, appears to be a distinction made between perennial, clerical work and substantive, project-based work. In the instant case, the consultant is providing project associated services that will result in a final report and final product in the form of a report and an RFP for a future study of voter fraud and voter intimidation.

Issues regarding the agreement's unauthorized nature arose near the end of the award process. While the contract authority (Commissioners) properly took action to make an award determination, they relied on EAC employees to communicate this fact to the contractor. In doing so, the Commission failed to realize that it is the communication of acceptance and award by the appropriate person that serves to obligate the government. EAC personnel seem to have viewed the Commissioners' concurrence as granting them the authority to communicate award in a manner that would obligate the agency. The bottom line is that the EAC employee believed her efforts to notify the contractor of award obligated the EAC by accepting the contractor's proposal. Based upon this, the contractor began performance on the agreement and the EAC has and will receive benefit.

**RECOMMENDATION:**

- (1) Review the contract, contract materials and statements of persons involved in the contracting process;
- (2) Ratify the contract by voting affirmatively to take such action;
- (3) Authorize the Chair on behalf of the Commission, with concurrence by the General Counsel, to document such ratification through a memorandum for the record to become a permanent part of the contract file on this contract;
- (4) Execute the contract and transmit the signed contract to the contractor.



Paul DeGregorio /EAC/GOV

11/17/2005 10:18 AM

To Juliet E. Thompson/EAC/GOV

cc

bcc

Subject Fw: RESPONSE REQUESTED-Working Group for Voting  
Fraud and Voter Intimidation Project

Fyi.  
Any recommendations?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Margaret Sims

**Sent:** 11/16/2005 01:12 PM

**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez;  
donetta.davidson

**Cc:** Sheila Banks; Amie Sherrill; Adam Ambrogi; Elieen Collver; Gavin Gilmour

**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

026019



Possible Working Group Members -Serebrov.doc Possible Working Group Members- Wang.doc

## 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

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

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





Paul DeGregorio /EAC/GOV  
09/28/2006 09:09 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Speech on Fraud intimidation Sept 29 06 Salt Lake City

Thanks. I actually sent you an earlier version by mistake. That paragraph. (and a few others) have been improved. You are right about Tova. I'll say the consultants' report is undergoing staff review.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Juliet E. Hodgkins  
**Sent:** 09/28/2006 08:52 PM  
**To:** Paul DeGregorio  
**Subject:** Re: Speech on Fraud intimidation Sept 29 06 Salt Lake City

Paul,

Two comments:

1) There is a sentence on page 2 that doesn't make sense. I have copied the text below.

. While others consider any form of ineligible voter as fraud.

2) I am pretty sure that we have received the final product from our voter fraud/intimidation contractors. However, that product is pending staff review. So, if Tova is in the audience and she likely will be, she may challenge the statement in the speech that we await their report.

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

-----Paul DeGregorio/EAC/GOV wrote: -----

To: Juliet E. Thompson/EAC/GOV, Jeannie Layson/EAC/GOV  
From: Paul DeGregorio/EAC/GOV  
Date: 09/28/2006 05:10PM

026025

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

History

 This message has been replied to

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.



draft response to Tova Wang.doc

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

026026

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.

Juliet E. Hodgkins/EAC/GOV  
12/08/2006 05:37 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft response to Tova Wang 


History:  This message has been replied to

I can certainly do that. I was focusing on trying to use her own words against her.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
12/08/2006 05:29 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: Draft response to Tova Wang 

Julie,

The letter is good, but don't you want to point out that in every report we issue that the research provided by paid consultants/organizations is provided under contract to the EAC, who by law is ultimately responsible for any final report issued to the public. And that such reports always takes into consideration the research provided but the EAC is obligated to consider all factors when making determinations to insure fairness and integrity of the process.

Paul

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 12/08/2006 04:38 PM  
**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson; Thomas Wilkey  
**Cc:** Bert Benavides; Sheila Banks; Elieen Collver; Matthew Masterson; Jeannie Layson  
**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.

[attachment "draft response to Tova Wang.doc" deleted by Paul DeGregorio/EAC/GOV]

Juliet Thompson Hodgkins  
General Counsel

026028

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

026029



Paul DeGregorio /EAC/GOV

12/08/2006 05:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Re: Draft response to Tova Wang

I saw that...and feel it's VERY appropriate considering the unprofessional conduct she had shown in dealing with this matter.  
Have a great weekend.

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins

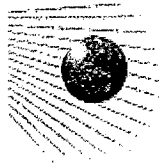
**Sent:** 12/08/2006 05:37 PM

**To:** Paul DeGregorio

**Subject:** Re: Draft response to Tova Wang

I can certainly do that. I was focusing on trying to use her own words against her.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV

12/08/2006 05:29 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

Subject Re: Draft response to Tova Wang

Julie,

The letter is good, but don't you want to point out that in every report we issue that the research provided by paid consultants/organizations is provided under contract to the EAC, who by law is ultimately responsible for any final report issued to the public. And that such reports always takes into consideration the research provided but the EAC is obligated to consider all factors when making determinations to insure fairness and integrity of the process.

Paul

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins

**Sent:** 12/08/2006 04:38 PM

**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson; Thomas Wilkey

**Cc:** Bert Benavides; Sheila Banks; Eileen Collver; Matthew Masterson;

Jeannie Layson

026030

**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.

[attachment "draft response to Tova Wang.doc" deleted by Paul DeGregorio/EAC/GOV]

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

026031

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC  
bcc

Subject Fw: Draft response to Tova Wang

History This message has been replied to

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

Juliet Thompson 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 12/11/2006 11:37 AM —



Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc

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 ?



Tova Wang, Dec06.doc

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

026032



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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:** ¶  
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**Deleted:** EAC honored this commitment by providing the readers of its report with

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**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:**

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¶  
For these reasons, t




Gracia Hillman /EAC/GOV

12/11/2006 02:16 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

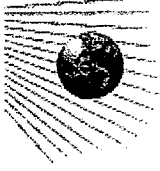
cc "Davidson, Donetta" <ddavidson@eac.gov>, Paul DeGregorio/EAC/GOV@EAC

bcc

Subject Re: Fw: Draft response to Tova Wang 

With respect to how the letter to Tova is signed, either way is fine with me.

026035



Paul DeGregorio /EAC/GOV

12/11/2006 03:40 PM

To Juliet E. Hodgkins/EAC/GOV

cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC

bcc

Subject Re: Fw: Draft response to Tova Wang

Julie,

I am ok with the edits Commissioner made to the letter; however, I do think that because of the tone of Tova's letter, which is likely to be supplied to others (as was their report to us). that we need a paragraph in the letter that makes it clear that the process used in producing this final report was consistent with the process we have used in all the reports and studies we have issued to date. What she needs to know (in writing) is that while we review the work of our researchers and consultants on a topic closely to draw various conclusions, our staff and the commissioners themselves have input into the final product that becomes the public report issued by a majority vote of the EAC. Since I've been on the EAC, we have consistently questioned statistics, statements and conclusions drawn by those doing work for the EAC. We have also drawn upon our collect resources and wisdom to produce the best report possible. I think that was true in this case as it has been with all the other reports we have issued. In the end, it is the EAC--and the commissioners in particular--who are held accountable for what we adopt and release; not our paid consultants or organizations we contract with to do studies.

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

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul DeGregorio/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC

Subject Fw: Draft response to Tova Wang

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

Juliet Thompson Hodgkins

026036

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 12/11/2006 11:37 AM —



Gracia Hillman/EAC/GOV

12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc

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 ?**

[attachment "Tova Wang, Dec06.doc" deleted by Paul DeGregorio/EAC/GOV]

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

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026037



Gracia Hillman/EAC/GOV

12/11/2006 03:43 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC


bcc

Subject Re: Fw: Draft response to Tova Wang 

I agree with the Chairman's recommended additional language.

026038

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 03:50 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
bcc  
Subject Re: Fw: Draft response to Tova Wang 

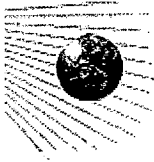
Commissioners,

Consistent with the changes requested by both Commissioners DeGregorio and Hillman, I have revised the draft response. Please take one more look at the letter. If possible, it would be nice to get this out today.




tova wang response 121106.doc

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio/EAC/GOV  
12/11/2006 03:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
Subject Re: Fw: Draft response to Tova Wang 

Julie,

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Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005

026039

1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul  
DeGregorio/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC  
Subject Fw: Draft response to Tova Wang

commisisoners,

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Juliet Thompson 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 12/11/2006 11:37 AM —



Gracia Hillman/EAC/GOV  
12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov  
cc  
Subject Re: Draft response to Tova Wang

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

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I hope you will find the attached helpful.

BTW, who will sign the letter ?

[attachment "Tova Wang, Dec06.doc" deleted by Paul DeGregorio/EAC/GOV]

026040



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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December 11, 2006

Ms. Tova Wang  
c/o The Century Foundation  
1333 H Street NW, 10<sup>th</sup> Floor  
Washington, DC 20005

Via U.S. Mail and Facsimile Transmission  
202-483-9430

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.

As the agency responsible for these final reports, it is incumbent upon EAC to assure that the information contained in the reports is accurate and fairly presented. With each of the reports, best practices documents, quick start guides, and other documents that EAC publishes, EAC makes changes as needed to make certain that our constituents are receiving the best and most complete information. This due diligence process is observed regardless of whether the document was created in-house or was created by consultants or contractors.

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.

Deleted: ¶

025042

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,

<u>Paul DeGregorio</u>	<u>Donetta Davidson</u>
<u>Chairman</u>	<u>Commissioner</u>

Gracia Hillman  
Commissioner

Karen Lynn-Dyson/EAC/GOV

To twilkey@eac.gov, Bert A. Benavides/EAC/GOV@EAC

cc

06/15/2006 11:26 AM

bcc Paul DeGregorio/EAC/GOV

Subject Eagleton letter in response to the Chairman

History:

 This message has been forwarded

Tom-

Attached is a letter which I have drafted for you summarizing the Commissioner's discussion on the Eagleton contract and which will respond to John Weingart's letter to the Chairman.

K



Wilkey Eagleton close out letter.doc

Karen Lynn-Dyson

Research Manager

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

tel:202-566-3123

026044

June 15, 2006

John Weingart:  
Eagleton Institute of Politics  
Rutgers University

Dear John:

During its bi-weekly meeting the four EAC Commissioners met, discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

The four Commissioners were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion the Commissioners have asked that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in your June xxx letter to Chairman DeGregorio) be included in the final report on provisional which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final report and, from it, develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

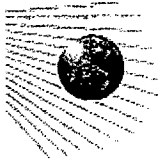
The EAC Commissioners have also reviewed and considered next steps with the voter identification draft report which Eagleton has prepared. While the final disposition of the results and findings of this study, on the part of the EAC, are still unclear, the Commissioners have asked that the final report of this study also be prepared and submitted to the EAC not later than June 30, 2006.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues during the last eighteen months.

Sincerely,

Thomas Wilkey

026045



Paul DeGregorio /EAC/GOV

06/15/2006 03:25 PM

To Amie J. Sherrill/EAC/GOV

cc

bcc

Subject Fw: Eagleton letter in response to the Chairman

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

----- Forwarded by Paul DeGregorio/EAC/GOV on 06/15/2006 03:24 PM -----

Karen Lynn-Dyson/EAC/GOV

06/15/2006 11:26 AM

To twilkey@eac.gov, Bert A. Benavides/EAC/GOV@EAC

cc

Subject Eagleton letter in response to the Chairman

Tom-

Attached is a letter which I have drafted for you summarizing the Commissioner's discussion on the Eagleton contract and which will respond to John Weingart's letter to the Chairman.

K



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

026046

June 15, 2006

John Weingart:  
Eagleton Institute of Politics  
Rutgers University

Dear John:

During its bi-weekly meeting the four EAC Commissioners met, discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

The four Commissioners were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion the Commissioners have asked that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in your June xxx letter to Chairman DeGregorio) be included in the final report on provisional which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final report and, from it, develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

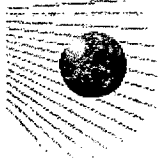
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We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues during the last eighteen months.

Sincerely,

Thomas Wilkey

026047



Paul DeGregorio /EAC/GOV  
10/12/2006 05:20 PM

To Caroline\_C.\_Hunter@who.eop.gov  
cc  
bcc  
Subject Report

Caroline,

You may have read some news articles regarding a "report" we did not release publicly regarding a study we are conducting on vote fraud/voter intimidation issues. The report in question is a May 17 status report on the study that was given to our Advisory and Standards Boards at a meeting they had in Washington. Someone obviously leaked it to the media and some have now made suggestions that it was not released to keep its contents quiet. We had to give it to the media because it was a public document that we shared with our boards at a public meeting. I have attached a copy of the report and a letter that I sent today to Barbara Arnwine of the Lawyer's Committee for Civil Rights that explains what this is all about (she was quite misinformed in the letter she sent to the EAC last Friday). Staff and counsel are now reviewing more information, data and feedback that has come in since the May 17 status report and we are not likely to issue any final report on the initial study on this issue for a month or so.

Paul



10.12.06 response to B. Arnwine ltr.pdf 10.6.06 ltr from B. Arnwine re VF.I report.pdf Voting Fraud.Voter Intimidation.pdf

026048





U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 12, 2006

Ms. Barbara R. Arnwine  
Executive Director  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue, NW  
Suite 400  
Washington, DC 20005-2124

RE: October 6, 2006 Letter

Dear Ms. Arnwine:

Your letter of October 6, 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, a group of which you are now a member, 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, the working group meeting transcript, and data sources provided by the consultants as a part of their working papers. 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. Please continue to contact us with any concerns that you may have. You and your colleagues on the Board of Advisors are important to the EAC process. As such, you can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be provided to all members of the EAC Board of Advisors.

Sincerely,

A handwritten signature in cursive script that reads "Paul DeGregorio". The signature is written in black ink and is positioned above the printed name.

Paul S. DeGregorio, Chairman  
Designated Federal Officer, EAC Board of Advisors



1401 New York Avenue, NW  
Suite 400  
Washington, DC 20005-2124

VIA FACSIMILE

October 6, 2006

Chairman Paul S. 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

**Co-Chairs**  
Robert E. Harrington  
Marsha E. Simms  
**Secretary**  
Robert A. Murphy  
**Treasurer**  
William L. Robinson  
**Counsel**  
Nicholas T. Christatos  
**Executive Director**  
Barbara R. Arnwine

Dear Commissioners,

**Regional Vice-Chairs**

**Midwest Region**  
Lay Clayton  
Teresa J. Kinker  
**Northeastern Region**  
Gregory P. Mansel  
Neil V. McKinnel  
**Mid-Atlantic Region**  
Brooks R. Burdette  
Bellana D. Plevan  
**Southeastern Region**  
Paul W. Reubin  
Michael W. Tyler  
**Western Region**  
Nora Cregan  
Bradley S. Phillips  
Paul F. Fekstein  
**Chesapeake Region**  
Jonathan L. Greenblatt  
Kiri Keenan

As a member of the Election Assistance Commission (EAC) Board of Advisors and a member of the EAC's Working Group on Voter Fraud and Voter Intimidation, I write requesting the release of the EAC's Voter Fraud and Voter Intimidation Report. This report was commissioned over a year ago and has yet to be released. In May, 2006 the Working Group met to discuss the project and was told that the final report would be released shortly thereafter. Five months later, and on the heels of another national election, election officials, policy makers and advocates are without guidance from the EAC on this critical subject. Across the country and at all levels of government, legislative and judicial debates that should be informed by the report's findings continue. The EAC has had ample time to research and release this critical report. There is no reasonable explanation for this delay.

Please immediately release the Election Assistance Commission's Voter Fraud and Voter Intimidation report. If immediate release is not possible, please provide me with an explanation of the delay and a detailed time line for the report's release.

Thank You,

Barbara R. Arnwine  
Executive Director  
Lawyers' Committee for Civil Rights Under Law

cc: Hon. Trent Lott, Chairman, Senate Committee on Rules and Administration  
Hon. Christopher J. Dodd, Ranking Member, Senate Committee on Rules and Administration  
Hon. Vernon Ehlers, Chairman, Committee on House Administration  
Hon. Juanita Millender-McDonald, Ranking Member, Committee on House Administration



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

026052

## 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



Amie J. Sherrill/EAC/GOV

10/18/2006 11:03 AM

To Paul DeGregorio/EAC/GOV@EAC

cc

bcc

Subject Phone msg. - Jerry Reynolds of the U.S. Comm. on Civil Rights

He called regarding the voter fraud and intimidation report. He may be reached at (816) 556-2789.

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

026064



Jeannie Layson /EAC/GOV

10/18/2006 11:46 AM

To pdegregorio@eac.gov

cc asherrill@eac.gov, bwhitener@eac.gov

bcc

Subject Interview request

Mr. Chairman,

Chuck McCutchen of Newhouse News Service wants to interview you tomorrow at 11:30 regarding absentee voting, and your thoughts about whether this presents more opportunities for fraud. He asked for and I sent him the status report on fraud, but he's focused on the absentee voting angle. He knows you were a former elections official and have first hand experience with this issue. The interview would last about 15 min. Newhouse owns about 25 newspapers scattered throughout the nation. Please let me know if you can accomodate him. If so, we are to call him at 202-383-7801.

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)

026065



Amie J. Sherrill/EAC/GOV  
10/20/2006 04:26 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Letter to Mr. Reynolds Re: Voter Fraud Report

History: This message has been replied to

Attached is a draft letter from Julie to Mr. Reynolds of the Comm. on Civ Rights. It contains the same language as the other letters we have sent. Please let me know if you would like for me to use your e-signature and get it faxed to them this afternoon.

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

----- Forwarded by Amie J. Sherrill/EAC/GOV on 10/20/2006 04:23 PM -----



DeAnna M. Smith/EAC/GOV  
10/20/2006 04:02 PM

To Amie J. Sherrill/EAC/GOV@EAC  
cc  
Subject Letter to Mr. Reynolds Re: Voter Fraud Report



draft letter to Mr Reynolds.doc

DeAnna M. Smith  
Paralegal Specialist  
Office of the General Counsel  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, D.C. 20005  
202-566-3117 (phone)  
202-566-1392 (fax)  
[www.eac.gov](http://www.eac.gov)

025066

October 20, 2006

Gerald A Reynolds  
Chairman, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, NW  
Washington, DC 20425

**Via Facsimile Transmission ONLY**  
**202-376-7672**

RE: October 19, 2006 Letter

Dear Mr. Reynolds:

Your letter of October 19, 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

026067



Amie J. Sherrill/EAC/GOV  
10/18/2006 11:03 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Phone msg. - Jerry Reynolds of the U.S. Comm. on Civil Rights

He called regarding the voter fraud and intimidation report. He may be reached at (816) 556-2789.

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

026068

Margaret Sims /EAC/GOV  
09/27/2006 12:18 PM

To pdegregorio@eac.gov  
cc  
bcc  
Subject Last Submission from Vote Fraud-Voter Intimidation  
Consultants

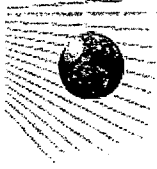
History:  This message has been replied to

Dear Mr. Chairman:

The last submission from the Vote Fraud-Voter Intimidation Study consultants is dated August 8. At this time, EAC staff are reviewing all items submitted for the report to the Commission with an eye toward the best way of presenting the information to the Commissioners for their consideration. There has been some delay in this staff review process, for which I take full responsibility.

Peggy Sims  
Election Research Specialist

026069




**Paul DeGregorio /EAC/GOV**

09/27/2006 12:36 PM

To Margaret Sims/EAC/GOV

cc

bcc

Subject Re: Last Submission from Vote Fraud-Voter Intimidation Consultants 

No big deal--and no big delay. Don't worry about it.

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

Margaret Sims/EAC/GOV

**Margaret Sims /EAC/GOV**

09/27/2006 12:18 PM

To pdegregorio@eac.gov

cc

Subject Last Submission from Vote Fraud-Voter Intimidation Consultants

Dear Mr. Chairman:

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Peggy Sims  
Election Research Specialist

026070

Juliet E. Hodgkins/EAC/GOV  
09/27/2006 01:43 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Media request - USA Today

Commissioners,

I wanted to make sure that you were aware of this request. Information that has previously been distributed to the Board of Advisors and Standards Board or otherwise publicly released will be provided to the requestor. This includes a status report on voter fraud and the information that was distributed to the SB and BOA regarding the provisional voting study.

Juliet Thompson 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 09/27/2006 01:41 PM —

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. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC  
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

026071

Bryan Whitener /EAC/GOV  
09/27/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc

Subject draft text for USA Today

History

 This message has been replied to.

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.

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.

###

026072



Karen Lynn-Dyson/EAC/GOV

05/25/2005 12:55 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Job Description for a Voter Fraud Project Consultant

Commissioners-

Attached please find a first draft of a short job description outlining EAC's expectations for a project consultant on voter fraud.

As you are aware, Julie has shared with me the resume of someone with an interest in the position. Ray has indicated that he participates in a legal list-serve group that has recently focused on voter fraud issues. This list-serve is probably a good place to "advertise" the consultant opportunity.

Let me know your thoughts on next steps. I look forward to getting this project up and running.

Regards-

K



vote fraud project manager.doc

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

026073

**Job Description****U.S. Election Assistance Commission (EAC) Voter Fraud Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to assist with the oversight and development of a study and possible project examining U.S. election voter fraud.

The consultant must of have a knowledge of voter fraud and an understanding of the complexities, nuances and challenges which surround the topic. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issue of voter fraud in a balanced, nonpartisan fashion.

This consultant, whose contract would run for the period June-November, 2005, would be responsible for conceptualizing a project scope of work around the issue and from that, developing a statement of work for a research project around the topic.

In consultation with EAC staff, EAC Commissioners, and other key EAC stakeholders, the consultant will develop a project plan around voter fraud. The consultant will recommend certain EAC project activities related to voter fraud and will develop a scope of work for an EAC research study on voter fraud. The consultant will oversee and manage various processes related to EAC contracts awarded for work related to voter fraud.

EAC's consultant fees are competitive and are awarded based on the candidates' relevant background and experience.

Karen Lynn-Dyson/EAC/GOV

To Paul DeGregorio/EAC/GOV@EAC

06/06/2005 01:03 PM

cc

bcc

Subject Project documents for your consideration

Paul-

Enclosed please find my revisions to the job description for the Voter Fraud and Voter Intimidation Project Consultant who would work with us to help us define our work around these issues. Please revise/edit and you see fit.

Also enclosed is a draft Statement of Work for EAC project work related to vote counts and vote recounts. I'm hoping that you will be willing to serve as lead Commissioner on this project, since I believe this is an area you have expressed an interest in and are concerned about.

Let me know your thoughts on these documents and how you would like me to proceed.

Hope the weekend was restful, and look forward to seeing you 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



Vote Count and Recount SOW.doc voterfraud project manager.doc

026075

Karen Lynn-Dyson/EAC/GOV  
05/09/2005 12:24 PM

To Juliet E. Thompson/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Gaylin Vogel/EAC/GOV@EAC  
cc Paul DeGregorio/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC

bcc

Subject Meeting with Craig DonSanto

Hi-

I've scheduled a meeting with Craig DonSanto for Tuesday, May 17th at 10:00 am in his offices.

We'll be discussing voter fraud and what the EAC might do regarding research on the issue. As you may know, Craig's office is issuing a major report/manual on the topic. He will share the draft of this effort with us at the meeting next week.

As you know, I'm hoping one of our interns will be working on this project for us this summer. In the meantime, I'm hoping at least one of the folks from the EAC legal team can come tho this meeting. BTW, Craig's office is just down the street.

Let me know your availability, and which intern you can assign to this effort.

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

026076

**Job Description****U.S. Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant must have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

This consultant, whose contract would run for the period June-November, 2005, would be responsible for:

- Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation;
- Developing a project scope of work and a project work plan related to voter fraud and intimidation;
- Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant may be retained to help oversee research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

EAC's consultant fees are competitive and are awarded based on the candidate's relevant background and experience.

Jeannie Layson /EAC/GOV  
06/10/2005 12:57 PM

To ghillman@eac.gov, rmartinez@eac.gov,  
pdegregorio@eac.gov  
cc klynndyson@eac.gov, cpaquette@eac.gov,  
jthompson@eac.gov  
bcc

Subject Eagleton draft press release

Commissioners,

Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

## **EAGLETON INSTITUTE OF POLITICS WINS \$560,000 CONTRACT FROM U.S. ELECTION ASSISTANCE COMMISSION**

### **Rutgers Institute to Study Provisional Voting, Voter Identification Procedures**

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a \$560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?

026078

- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?
- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?
- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be counted?
- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?
- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

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) Eagleton release.doc

026079

# Rutgers

News  
Office of Media Relations

Contact: [REDACTED]

June 13, 2005

DRAFT FOR APPROVAL

**EDITOR'S NOTE:** ATTENTION POLITICAL, ASSIGNMENT EDITORS

**EAGLETON INSTITUTE OF POLITICS WINS \$560,000 CONTRACT  
FROM U.S. ELECTION ASSISTANCE COMMISSION**

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Carol A. Paquette/EAC/GOV  
06/10/2005 02:09 PM

To Gracia Hillman/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Paul  
bcc  
Subject Re: Eagleton draft press release 

Made essentially the same comment to Jeannie regarding the guidance language in paragraph two. We had no input to the creation of this release, so there is no EAC intent to use this as a trial balloon.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV,  
cc Juliet E. Thompson/EAC/GOV, "Tom Wilkey" <twilkey@nycap.rr.com>  
Subject Re: Eagleton draft press release

I have some concerns about the press release. In paragraph two, I am not comfortable with the following language in what I believe is paragraph two: Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006.

It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 06/10/2005 12:57 PM  
**To:** Gracia Hillman; Raymundo Martinez; Paul DeGregorio  
**Cc:** Karen Lynn-Dyson; Carol Paquette; Juliet Thompson  
**Subject:** Eagleton draft press release

Commissioners,  
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026082

attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

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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)

Jeannie Layson /EAC/GOV  
06/13/2005 12:05 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ghillman@eac.gov  
cc cpaquette@eac.gov, jthompson@eac.gov,  
twilkey@nycap.rr.com  
bcc

Subject Eagleton press release

History: This message has been replied to.

Following is the Eagleton press release including revisions from the chair and Carol. If anyone else has changes or edits, please let me know by tomorrow morning so Eagleton can get this out. Thank you.

DRAFT FOR APPROVAL

**EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS**

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FROM U.S. ELECTION ASSISTANCE COMMISSION**

**Rutgers Institute to Study Provisional Voting, Voter Identification Procedures**

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a \$560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to consider in the development of its guidance to the states for the 2006 elections, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan agency and provides federal funds to states to upgrade voting systems and improve election administration. It publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration.

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security. Eagleton will examine the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local

026085

election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of potential alternatives to existing practices and procedures.

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Karen Lynn-Dyson/EAC/GOV

06/23/2005 02:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC  
bcc

Subject Fw: Peer Review Group

Commissioners-

Enclosed please find a preliminary list of Peer Review Group members, whom Eagleton is considering for their Peer Review Group. **Tom Wilkey will be bringing this item to you for discussion and input at Monday's Commissioner's meeting.**

Eagleton envisions this Peer Review Group as the body that will review the draft analysis that it will prepare on provisional voting and on voter identification. The Group would also provide comment on the development of alternative approaches to provisional voting and voter identification which Eagleton will develop for the EAC.

I have included the e-mail from the Eagleton Project Director, Tom O'Neil, so that you could get a feel for his approach/philosophy to assembling the Group.

Regards-  
K

Karen Lynn-Dyson  
Research Manager  
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/23/2005 02:25 PM -----



"Tom O'Neill"

[REDACTED]  
06/22/2005 03:29 PM

To klyndyson@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 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

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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



PROPOSED MEMBERS OF PEER REVIEW GROUP.doc



## PROPOSED MEMBERS OF PEER REVIEW GROUP

### **R. Michael Alvarez, Ph.D.**

Professor of Political Science  
California Institute of Technology  
[REDACTED]

Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College; his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

### **Deborah Goldberg, Ph.D**

Program Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
161 Avenue Of The Americas, 12th Floor  
New York, NY 10013  
[REDACTED]

Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

### **Martha E. Kropf, Ph.D.**

Assistant Professor of Political Science  
University of Missouri-Kansas City  
[REDACTED]

Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

### **Wade Henderson, Esq.**

Executive Director  
Leadership Conference on Civil Rights  
1629 K Street, NW, 10<sup>th</sup> Floor  
Washington, DC 20006

Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU.

### **Kay Maxwell**

President  
League of Women Voters of the U.S.  
1730 M Street NW, Suite 1000

Washington, DC 20036-4508  
[REDACTED]

Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project.

**Tim Storey**

Program Principal  
Legislative Management Program  
National Conference of State Legislatures  
7700 East First Place  
Denver, CO 80230

[REDACTED]

or  
444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001  
[REDACTED]

**Peter G. Veniero, Esq.**

Counsel  
Sills, Cummis, Epstein and Gross, PC  
One Riverfront Plaza  
Newark, New Jersey 07102  
[REDACTED]

Veniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

026090

Karen Lynn-Dyson/EAC/GOV  
07/01/2005 11:02 AM

To "Job Serebrov"  
[REDACTED]  
cc Juliet E. Thompson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc Paul DeGregorio/EAC/GOV  
Subject Re: project [REDACTED]

Job-

Thanks ever so much for following up. Indeed, the Commissioners have reviewed the issue and have agreed in principle, to an approach that would entail hiring a consultant or consultants to help the EAC study and frame the issues of voter fraud and intimidation.

The idea would be that after a period of time, the consultants, and, perhaps, a working group of the EAC, would make a series of recommendations on next steps for the agency to take regarding voter fraud and intimidation.

Thanks for your patience; I hope to have a definitive answer for you by mid-July at the latest.

Regards-

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026091

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

To "Job Serebrov"  
[REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC  
bcc Paul DeGregorio/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-

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026092

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

To "Tom O'neil" [REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC  
bcc Paul DeGregorio/EAC/GOV  
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

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026093

Karen Lynn-Dyson/EAC/GOV  
08/04/2005 05:44 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc

Subject Re: List of centrist/conservative groups 

Thanks for this list, Vice Chair. I've passed it along to Eagleton

Regards-

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026094

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-

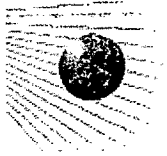
As mentioned in this morning's meeting, Eagleton/Moritz project staff are scheduled to come to Washington in early September to brief EAC staff on the project's progress to date.

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

Regards-

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— 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 [REDACTED]  
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

026095



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

08/18/2005 03:40 PM

To "jthompson@eac.gov" <jthompson@eac.gov>,  
"ddavidson@eac.gov" <ddavidson@eac.gov>,  
"twilke@eac.gov" <twilke@eac.gov>,  
cc "jthompson@eac.gov", "ddavidson@eac.gov",  
"twilke@eac.gov", "jthompson@eac.gov",  
"ddavidson@eac.gov", "twilke@eac.gov", "jthompson@eac.gov", "ddavidson@eac.gov", "twilke@eac.gov"

bcc

Subject Research Contracts

Dear Commissioners:

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

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

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

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

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

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

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

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

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

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

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

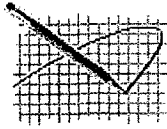
In addition to these postings, Dr. Tokaji is acting as an advocate on voter identification issues, having submitted a comment letter to the Department of Justice dated August 18, 2005, along with a number of other professors, urging an objection to a voter identification provision currently before the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

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

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

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

026097



Raymundo  
Martinez/EAC/GOV  
08/19/2005 01:02 AM

To "Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL  
cc Juliet E. Thompson/EAC/GOV@eac.gov, Donetta L.  
Davidson/EAC/GOV@eac.gov, "twilke@eac.gov"  
<twilke@eac.gov>, Paul DeGregorio/EAC/GOV@eac.gov,  
bcc

Subject Re: Research Contracts

Hans:

I'm currently at the Seattle airport awaiting a return flight to D.C., so I apologize if my response below is somewhat incomplete. I think the issue you raise certainly deserves our full consideration, so I will look forward to additional responses and dialogue from others included in this distribution list.

A couple of quick points in response to your concerns (and I am speaking for myself below, and not for the entire commission):

- (1) The RFP that was issued by the EAC pertaining to the research on provisional voting and voter ID requirements was widely advertised (as all our RFP's are). We did so because we wanted to receive a wide range of possible contractors to conduct this important research. This was a competitive RFP process which, if my memory serves me correct, produced a good number of responses from interested entities.
- (2) Carol Paquette assembled a review panel (I'm not sure how many persons were involved in the review panel) to score the responses to this RFP...the submission by the Eagleton Institute included, as a part of their proposal, the Moritz School of Law at Ohio State University as a partner in conducting the legal research required for Eagleton to provide a final report (due in October) to the EAC. The review panel scored the Eagleton submission as best, considering a variety of factors.
- (3) The lead entity in this project is the Eagleton Institute. While the project manager's name from Eagleton escapes me right now, the lead from Moritz is not Dan Tokagi, but Ned Foley, who directs the election law section (or something to that effect) at Moritz. Certainly it is true that Professor Tokagi is contributing to the work product being assemble by Moritz, which consists primarily of reviewing election and administrative codes from all 50 states to ascertain how each state deals with provisional voting and voter ID requirements.
- (4) As is the case with all federal contractors, both Eagleton Institute and Moritz are contractually obligated to produce objective, sound and unbiased research and analysis on this project. While it is certainly prudent to consider the potential bias of any prospective contractor(s), after receiving the recommendation from the review panel and Carol Paquette (at the time, the acting EAC Executive Director), we unanimously agreed among the commissioners that the recommendation was worthy of support. At the time, we were aware, for example, that the Eagleton Institute had been involved last year in some litigation involving provisional ballots. We were also aware, as you point out, of Professor Tokagi's personal views regarding the issue of voter ID and provisional voting. Nevertheless, there was unanimous agreement in supporting the staff (and review panel) recommendation to move forward with the proposal submitted by Eagleton Institute.
- (5) Finally, to ensure that the final workproduct from both Eagleton and Moritz is objective and representative of all view points on these important issues, Eagleton proposed early in the process -- and we enthusiastically agreed -- to the formation of a balanced peer review panel which will review the work, on an on-going basis, of Eagleton and Moritz. All EAC commissioners have had an opportunity to provide names to Eagleton to ensure appropriate political balance on this peer review panel and Eagleton has been responsive to our various suggestions.

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By way of summary, let me say that I believe we have an obligation to closely scrutinize the conduct of all of our federal contractors. If things come to light that bring into question the objectivity of any of our contractors, I believe the EAC ought to conduct its due diligence and deal with such matters accordingly, including the possibility of contract termination.

I would be happy to conduct such due diligence with regard to this particular contract. However, I must say, with all due respect, that I do not think any breach has occurred, either by Eagleton or Moritz, which would necessitate termination of this contract. I think appropriate checks and balances have been accounted for in this contract, and I believe these checks and balances will ensure an objective and sound final product from Eagleton.

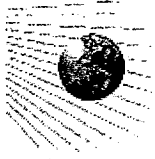
I welcome your continued feedback, Hans.

Kindest regards,

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
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Paul DeGregorio /EAC/GOV

08/19/2005 11:06 AM

To Gracia Hillman, Raymundo Martinez, d davidson@eac.gov,  
Tom Wilkey, Juliet Thompson, Karen Lynn-Dyson, Carol  
Paquette

cc

bcc Amie J. Sherrill/EAC/GOV

Subject Eagleton

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 staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against

026101

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.

**Paul DeGregorio**  
Vice Chairman  
US Election Assistance Commission  
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202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov



Gracia Hillman/EAC/GOV

08/19/2005 12:06 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc "Paul DeGregorio" <pdegregorio@eac.gov>, "Ray Martinez" <rmartinez@eac.gov>, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, Juliet E.

bcc

Subject Fw: Eagleton

Tom: Please put this on the agenda for discussion when we get together on Friday in Denver.

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio

**From:** Paul DeGregorio  
**Sent:** 08/19/2005 11:06 AM  
**To:** Gracia Hillman; Raymundo Martinez; Donetta Davidson; twilkey@nycap.rr.com; Juliet Thompson; Karen Lynn-Dyson; Carol Paquette  
**Subject:** Eagleton

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

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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 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.

**Paul DeGregorio**  
Vice 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

026104



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 insitutional 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.

026105



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  
1225 New York Avenue, N.W., Suite 1100  
Washington, D.C. 20005

(202) 566-3100 (W)  
(202) 566-3127 (FAX)  
[www.eac.gov](http://www.eac.gov)

CONFIDENTIALITY NOTICE: This email message 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 message and please delete it from your computer.

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

To "Tom O'neill" [REDACTED]  
cc  
bcc Paul DeGregorio/EAC/GOV  
Subject Re: Peer Review Group [REDACTED]

History: This message has been forwarded

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

026107



RecruitmentStatus.doc

**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 [REDACTED]	<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 [REDACTED]	<b>YES</b>
<b>Martha E. Kropf, Ph.D.</b> Assistant Professor of Political Science University of Missouri-Kansas City [REDACTED]	<b>YES/CONFIRMED</b>
<b>Daniel H. Lowenstein</b> Professor of Law UCLA [REDACTED]	<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>

Karen Lynn-Dyson/EAC/GOV  
08/19/2005 04:38 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Requested Documents

Commissioner-

I thought you would find of particular interest, the attached short description that one of our consultants who will be working on the voting fraud, voter participation issues, has provided.

I think Job will be a wonderful addition to our group of consultants and will bring a wealth of practical knowledge and political balance to our review of the voting fraud and voter intimidation issue. Job is very, very excited about working on this topic and looks forward to meeting the EAC staff, when we bring them together for a meeting in early September.

Best-

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 08/18/2005 04:32 PM -----



"Job Serebrov"

[Redacted]

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.

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

026110

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 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.

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.

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(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  
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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

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- 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)



Thomas R. Wilkey/EAC/GOV  
08/19/2005 04:44 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV  
cc  
bcc

Subject Re: Requested Documents

Yes I believe he will make a great addition to this project and will bring a wealth of experience on dealing with voter fraud . He even makes me look like raving moderate.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 08/19/2005 04:38 PM  
**To:** Paul DeGregorio  
**Subject:** Fw: Requested Documents

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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 08/18/2005 04:32 PM -----



"Job Serebrov"

████████████████████  
08/19/2005 04:14 PM

To klyndyson@eac.gov  
cc

Subject Re: Requested Documents

Karen:

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026114

Regards,

Job

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026115

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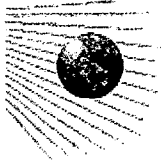
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#### Related Education

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



Paul DeGregorio/EAC/GOV  
08/22/2005 02:49 PM

To Amie J. Sherrill/EAC/GOV  
cc  
bcc  
Subject Fw: Peer Review Group


Amie,

I need for you to do research into every identified on this Peer Review Group to identify their politics and/or political leanings. You can go to [www.opensecrets.com](http://www.opensecrets.com) to determine if they have given to political candidates. Thanks.

Paul DeGregorio  
Vice 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](mailto:pdegregorio@eac.gov)  
[www.eac.gov](http://www.eac.gov)

----- Forwarded by Paul DeGregorio/EAC/GOV on 08/19/2005 10:52 PM -----

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

To "Tom O'Neill" [REDACTED]  
cc  
Subject Re: Peer Review Group 

Tom-

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Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100

026119

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,

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Tom O'Neill



RecruitmentStatus.doc

026120



Paul DeGregorio /EAC/GOV

08/30/2005 02:31 PM

To Karen Lynn-Dyson

cc Thomas R. Wilkey/EAC/GOV

bcc ddavidson@eac.gov

Subject Eagleton Peer Review Group

Karen,

I have reviewed the Eagleton Peer Review Group recruitment list that you recently provided. Based on what I or Amie can determine from the bio's provided or an Internet search, it appears that at least 4 of the 7 people who have said yes to be on the group seem to have a liberal perspective, or have had a history of working on that side of the political spectrum. I could only identify one as being a Republican, and a moderate one at that (Verniero). Mike Alvarez has conducted a lot of research into election issues and generally seems to do it in a neutral way. I have been unable to obtain a bio or background information on Tim Storey, who is not an academic. The only person that I could identify on their list as being conservative was Brad Clark, who has declined to participate.

Therefore, based on this information regarding the Peer Review Group, I am not satisfied that they will provide Eagleton with the balanced review that I thought they would receive from such a group. I would urge you to ask them to seek the input of more conservative academics so that whatever study we receive from them will have the benefit of a balanced review. I am going to have Amie provide you with the background sheet on Professor Tim O'Rourke of Salisbury University in Maryland, whom they may want to consider for this panel. We have some calls into others who could suggest some conservative academics for this review panel.

Thanks.

Paul DeGregorio  
Vice 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

026121





Amie J. Sherrill/EAC/GOV  
09/17/2005 11:22 PM

To Paul DeGregorio/EAC/GOV  
cc  
bcc  
Subject Fw: Tally Vote voter fraud

Amie J. Sherrill  
Special Assistant to Vice Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106  
Nicole Mortellito

**From:** Nicole Mortellito  
**Sent:** 09/16/2005 03:29 PM  
**To:** Amie Sherrill; Sheila Banks  
**Subject:** Tally Vote voter fraud



Tallyvote Ballot Voter Fraud.doc Tally vote Memo - voter fraud.doc

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

026122



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** September 16, 2005, 3:00PM

**BALLOT DEADLINE:** September 20, 2005, 3:00PM

**COMMISSIONERS:** HILLMAN, DEGREGORIO, MARTINEZ, DAVIDSON

**SUBJECT:** Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

- I approve the recommendation.
- I disapprove of the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to DeAnna Smith. Please return the ballot no later than the date and time shown above.

FROM THOMAS R. WILKEY, EXECUTIVE DIRECTOR

026123



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

## **TALLY VOTE MEMORANDUM**

TO: EAC Commissioners Hillman, DeGregorio, Martinez, Davidson  
FROM: Thomas Wilkey, EAC Executive Director  
DATE: September 16, 2005  
RE: Consulting assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

### **Background**

“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:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues, to determine how the EAC might respond to them, is a high priority.

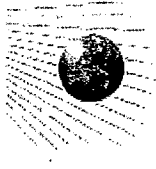
The U.S. Election Assistance Commission (EAC) has identified two senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections. The consultants, whose contracts would run for the period September-February, 2005, would be responsible for helping the EAC identify what constitutes voting fraud and voter intimidation affecting Federal elections.

To accomplish this the consultants will: perform background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, along with a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations; in consultation with EAC, identify and convene, a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; develop an EAC project scope of work and a project work plan related to voting fraud and voter intimidation and; author a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation.

### **Recommendation**

Attached is the Statement of Work for the voting fraud and voter intimidation project consultants. The consultant contract fees total \$110,000 (\$55,000 per person). An additional \$10,000 is allotted for the voting fraud and intimidation project working group. The total project amount is \$120,000.

026124



Paul DeGregorio /EAC/GOV

09/18/2005 04:38 PM

To Amie J. Sherrill (EAC)

cc Thomas R. Wilkey/EAC/GOV, Juliet E. Thompson/EAC/GOV,  
Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV

bcc

Subject Tally Votes

This is to authorize my Special Assistant, Amie Sherrill, to mark on my behalf the following Tally Votes regarding the awarding of contracts, as approving the staff recommendation for each of the following:

1. RFP #05-04 to the University of Florida Levin College of Law for the development of legal resources clearinghouse
2. RFP #05-07 to the Center for Public Policy and Administration of the University of Utah for the development of best practices on vote count and recount procedures
3. RFP #05-11 to Zimmerman Associates, Inc for the development of records management policies and procedures
4. Sole Source contracts to Job Serebrov and Tova Wang in developing a EAC Voting Fraud and Voter Intimidation Project
5. Sole Source contract to the National Academies of Science for Technical Support for Statewide Registration Database Implementation with Online Forums for Discussion

Paul DeGregorio  
Vice Chairman  
US Election Assistance Commission  
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026125

Thomas R. Wilkey/EAC/GOV  
09/19/2005 01:30 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Couple of Items

Paul; I know I relayed this message to you through Aimee but just double checking to let you know that Eagleton put from FEC Commissioner Brad Smith on the peer review group. We have had a devil of a time getting anyone someone to return are calls from FEMA and have tried several places including the woman you recommended. I am having Donetta call her contact at the White House to see what he can do. We also extended an invitation to them to attend. And finally did you know you are a celebrity now. If you received the Carter/Baker report look under the section on Administration and there is a picture of a couple of guys from the EAC Safe Travels  
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

026126

Karen Lynn-Dyson/EAC/GOV

10/17/2005 03:29 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC

bcc

Subject Fw: Eagleton's September Progress Report

Commissioners-

Attached please find a copy of the September Eagleton/Moritz progress report.

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 10/16/2005 03:25 PM —



jdobrich@eden.rutgers.edu

10/17/2005 03:14 PM

To klynndyson@eac.gov

cc

Subject Eagleton's September Progress Report

Dear Ms. Karen Lynn Dyson:

My name is Johanna Dobrich and I have taken over the responsibility of sending the Eagleton Institute of Politics Monthly Progress Reports to you, in place of Lauren Vincelli.

Attached in this email you will find the Eagleton Institute of Politics monthly Progress Report for September 2005. Also attached, is a document called "PRG Summary Comments" which is an attachment to September's Progress Report.

Please email me at [jdobrich@eden.rutgers.edu](mailto:jdobrich@eden.rutgers.edu) to confirm that you have received this email. If you prefer I send a hard copy of these documents, in addition to the electronic version, please let me know.

Sincerely,

Johanna Dobrich



ProgressReport\_SEPTEMBER2005\_EagletonInstitute.doc PRG Summary Comments 10.17.05.doc

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Deliberative Process  
Privilege

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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**  
**September 2005**

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

September 14, 2005

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

026128

## 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 September 1 through September 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.

We focused in September on refining our Provisional Voting research. This refinement was necessary to prepare a strong final analysis paper and develop alternative approaches to Provisional Voting based on the analysis. An important part of this refinement involved reconciling sometimes conflicting data on Provisional Voting from different sources, including the Election Day Study, which finally became available in September. With a clearer understanding of our data, we began the critical work of selecting alternatives to recommend to the EAC as guidance or best practices responsive to both our research and the needs of the Commission.

Three meetings this month helped us accomplish the necessary refinement. We briefed the EAC on our work on September 6, held the first meeting of the Peer Review Group (PRG) on September 21, and gained the benefit of the EAC's reaction to the September 6 briefing in a conference call on September 30.

The completion of our work on Provisional Voting has been delayed by the time needed to absorb and incorporate the findings of the EAC Election Day Study, to recruit and receive the comments of the PRG, and to receive the Commission's comments on the September 6 briefing. The schedule called for the release of the Election Day Study last spring, the submission of the Preliminary Guidance Document to the EAC's advisory boards in mid-September, and a public hearing on the Guidance Document in late October. We now plan to submit to the EAC a final draft of our report, a preliminary guidance document, and draft



best practices before the end of October. And we understand that after review of those materials, the EAC will decide whether to issue a guidance document or recommend best practices. Projecting a late November date for those decisions seems reasonable. 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 January.

While we have made a good start on the Voter ID sections of our research, most time and resources this month were dedicated to resolving issues involved in Provisional Voting.

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.

## **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 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 analysis of the information, data, and survey results concerning Provisional Voting was completed in September, on schedule. We are now revising it in response to comments by the Peer Review Group (PRG). We are also revising the alternatives document to reflect the critique of the PRG and the guidance from the EAC in response to the September 6 briefing.

### **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.

### **PROVISIONAL VOTING STATISTICAL ANALYSIS**

**Description:** Throughout September the Eagleton research team revised and clarified 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:** In response to comments from the PRG, we have clarified and sharpened the presentation on the methods used and results achieved in the statistical analysis. We have double checked the classification of variables upon which the study is based and reconciled differences in various areas of the overall study. This effort is nearing completion.

**Challenges:** The difficulties encountered have been a result of communication delays and time constraints. Overall, these are not problems or hindrances, but simply slow down the process.

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**Work Plan:** In mid-October we aim to complete a final revision of the statistical analysis and a full reconciliation of all data within the study.

### **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.

### **Peer Review Group**

Most members of the PRG met by telephone conference on September 21 to comment on all the research described above. Participating in the meeting were Michael Alvarez, Martha Kropf, Dan Lowenstein, Peter Verniero, Brad Smith, and Tim Storey. Timothy O'Rourke contributed his comments separately. The group provided a detailed critique of our approach, methods, and conclusions, and we are now revising each document in response to the comments and suggestions. It praised the quality of the work and the rigor of much of the analysis. A summary of the suggestions from the members of the PRG is attached to this report.

### **Challenges and Work Plan**

Making arrangements for review of drafts by the PRG and by the EAC has taken longer than anticipated by the Work Plan. The schedule called for all research and analysis to have been completed and incorporated into a Draft Preliminary Guidance Document by mid September. The review process by the EAC and PRG took longer than contemplated by the Work Plan. And we now understand that the EAC will make a separate decision—that will require additional time—whether to issue a Guidance Document or recommendations for best practices. It has not, therefore, been possible to schedule a public hearing or arrange for review of our work by the EAC's advisory boards, as called for in the Work Plan. We now aim to complete our reports and recommendations for guidance by the end of October, and to then await a response from the EAC before scheduling submission to the advisory boards or making arrangements for a hearing.

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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 will begin now.

### 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. We understand that the EAC has issued a

research contract that will focus on vote fraud and vote suppression. Our research in this area will be limited to developing an understanding of the tradeoffs between ballot security and access to the ballot. We have completed the basic database on voter identification issues has been completed, and the next key step will be 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 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 utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

**Challenges:** The analysis of these data has been postponed until the data reconciliation of Provisional Voting is complete. The main challenge now is an issue of time management. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID has been temporarily placed on hold.

**Work Plan:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early November.

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## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

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

**Progress:** The research team held its first conference call with PRG members on September 19, 2005. The research team will hold a workshop meeting on October 19, 2005 to address the PRG's comments.

**Challenges:** To date we still have not heard back from two PRG Members.

**Projections:** Revisions and clarifications to our reports on Provisional Voting will be resolved by the end of October. We will need to schedule a second conference call to review our research with regard to Voter Identification Requirements in late November. As noted earlier, a summary of the comments we have received from the PRG is attached to this report.

### **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.

**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**

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**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 helped 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 September 1- September 30, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

026137



*Peer Review Group  
Summary of Comments  
To the Eagleton/Moritz Group  
Under Contract to Provide Research Assistance to the EAC*

*October 15, 2005*

The Peer Review Group (PRG) met by telephone conference on September 21. Those participating included: Michael Alvarez, John C. Harrison, Martha Kropf, Dan Lowenstein, Peter Verniero, Brad Smith, and Tim Storey. This summary also includes additional written remarks submitted by Martha Kropf and additional remarks from a follow-up phone call with Timothy O'Rourke. We are now addressing all the comments including, in some cases, returning to members of the group to seek further elaboration or clarification.

We encouraged the members of the PRG to comment about any aspect of the project. We furnished them with these materials before the meeting.

1. Survey of local (mainly county) officials conducted in June 2005.
2. State-by-state narrative of developments in provisional voting
3. Statistical Analysis of state provisional voting
4. Memorandum on Provisional Voting Litigation
5. Memorandum on Provisional Ballot Litigation by State
6. July Memorandum on Provisional Ballot Litigation by Issue

We suggested that PRG members rank our draft responses to each of the six key questions posed by the EAC along these lines:

- 1- Research supports conclusions well.
- 2- Research supports some conclusions. Specific questions are:
- 3- Research does not support conclusions. Major problems are:

On the Alternatives paper, we asked PRG members to list up to three items they found questionable in light of the research and their own knowledge of provisional voting and election administration and to give us their thoughts on alternative policies that we had no included.

General Suggestions

1. Make transparently clear the meaning of 'old' versus 'new' states. It is not enough to categorize the states as such, we need to determine why specific states were considered 'old' or 'new' (i.e. clarify what conditions were met by old states).

2. Be **clear** in our report about the **data that we were unable to obtain** and perhaps speculate on why that data was not available. (For example, do we have the documentation the state election boards gave the localities regarding counting practices? If not, why not? Indicate the states for which it was difficult to obtain data.

3. Prescribe less and **describe more** (tell what voters/administrators have done, not what they should have done or ought to do).

4. Questioned our assumption about public trust – How do we know that decreases in disputes/challenges signify an increase in public trust? We need to explain this assertion.

#### Specific Review by Area of Analysis/Document

##### **Response to Statistical Review:**

- Challenged our emphasis on the number of provisional ballots counted as a percentage of those cast as an indication of success of Provisional Voting. Suggested alternative relationships to consider (PB v. Turnout, PB v. Registered Voters, and PB v. Voting age Population).
- Wanted the inclusion of variation within states among counties (and geographical considerations).
- The report needs to address the quality and validity of the data used in the analysis.
- On Page 8, cautioned using the estimate of 280,000 disenfranchised voters who would have voted if outside precinct voting was permitted.

##### **Response to Question Four:**

- Remove the comments in the footnote (p. 1) that offers an alternative way of analyzing the question relating to the possible increase in voter participation as a result of provisional voting because the margin of error in the Census survey does not support a conclusion at this level of significance.
- Address the alternative explanation for why old states may enfranchise more voters than new states (i.e. Kropf 's Failsafe option).
- Include a statistical summary of the relationship between the length of time a state has had PV and the rate at which votes are counted.

##### **Response to Question Five:**

- Is it possible to draw any conclusions about the local differences within and among states broken down by county (presumably 20 states worth)?

- Clarify what is meant by “design” and say how many states have/had provisional ballots that are designed differently and look different. Why is design important?
- Page 17 indicates that states with statewide voter databases end up validating fewer PVs. This is important & should be addressed in more detail.

#### **Response to Question Six:**

- On the usefulness of instructions, 98% said the instructions were useful. Make it clear that this represents 98% of the officials who got instruction.
- Is the passive voice the best means to communicate this information (for ex. "Second, objectively how well did the process appear to be managed?")

#### **Response to State Narratives:**

- When in doubt about whether we have data to support a sentence it is important to be careful about the language we use (say ‘doing XYZ would have revealed’ as opposed to ‘most of what we know about XYZ revealed’ ...)
- Clarify for the readers what is meant by "provisional vote/total vote". Does that mean provisional votes cast? Counted? Make it clear right at the beginning of every document?
- Footnote states that do not list poll sites or tell people where to vote with the fact that many cities/counties do have a poll finder.

#### **Election Official Survey**

- Clarify how we determined who to include in the sample and how we developed the questions in the survey (was a focus group an initial step?) Why were 3,800 election officials deemed eligible to participate (out of how many? 5,000 or so?)
- Clarify old and new states on pg. 2 in National Survey. Comment on how to assess fraud in provisional voting? What is the relationship between PV and turnout?
- Explore more issues about citizenship (18% non-citizen voting in CA)?
- Appendix A says survey was random, but it’s not. How was the data weighted for small, medium and large counties, and for other issues? Clarify this in the report.

- Why doesn't the total of new and old states equal 50 (25 and 18) and why does the National Survey of Election Officials have different numbers? Is FL an 'old' state?
- Are the New England states underrepresented in the survey? If so, why?
- Report should offer more information about the response rate.

#### **. Alternatives Document**

- The importance of clarity in state processes for both administrators and voters needs to be better articulated.  
(Better training of poll workers, clarity whether failure to check boxes disqualifies voters, access to better info. at polling locations)
- Cautions the use of definitive statements (such as A-3, perhaps say "This raises the question of...").
- Have other EAC Guidelines been tested in court yet?
- On page 3: the 'tracking number' in # 6 is not feasible. Also, "the information" in # 12 should be changed to "the website and 800 numbers" for clarification.
- Page 6, there were disagreements about # 1 and # 2 of options in Sec. F regarding the installation of a separate body to rule on PV for the integrity process; a motion was made to get rid of them.
- Page 6, Sec. E option # 1 should be eliminated or clarified
- Add to Sec. F a '# 5' requiring states to provide detailed public info. on PV



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

10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
 "rmartinez@eac.gov" <rmartinez@eac.gov>,  
 "pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
 cc "christopher [REDACTED]"  
 <christopher [REDACTED]>, "bkaufma [REDACTED]"  
 <bkaufma [REDACTED]>, "dlewis [REDACTED]"  
 bcc

Subject Research Grants

History: This message has been replied to and forwarded.

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026142

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Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026143



Paul DeGregorio /EAC/GOV  
10/18/2005 04:56 PM

To Juliet Thompson, Thomas R. Wilkey (EAC)  
cc  
bcc

Subject Fw: Research Grants

I am not sure you received this e-mail from Hans (it wasn't clear on the to: list).

Paul DeGregorio  
Vice 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

— Forwarded by Paul DeGregorio/EAC/GOV on 10/18/2005 04:56 PM —



"Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
"rmartinez@eac.gov" <rmartinez@eac.gov>,  
"pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>,  
"ddavison@eac.gov" <ddavison@eac.gov>  
cc "christophert [REDACTED]"  
<christophert [REDACTED]>, "bkaufma [REDACTED]"  
<bkaufman [REDACTED]>, "dewis [REDACTED]"  
<dewis [REDACTED]>, "tjsthree [REDACTED]"  
<tjsthree [REDACTED]>, "wrklinerjr [REDACTED]"  
<wrklinerjr [REDACTED]>  
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026144

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Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice

026145



950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026146

Juliet E. Thompson/EAC/GOV  
10/18/2005 05:02 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Job Serebrov

Voter Fraud experience

Worked for Mike Hucaby (sp??) in his Lieutenant Gov's race as counsel for ballot fraud protection

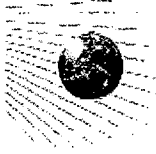
Formed and worked for Arkansans for Fair Elections (non-profit -- unofficial effort of the Rep. party) working on voter fraud issues (approximately 8 years). That included organizing a state ballot protection campaign, a video and written materials protection plan, and working on a variety of fraud issues (ballot stuffing, voting system fraud, counting issues), and handling legal issues.

Appointed by Asa Hutchinson to be counsel for ballot issues.

Federal election attorney for Fay (sp) Bozeman in the failed campaign.

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

026147



Paul DeGregorio /EAC/GOV  
10/18/2005 05:17 PM

To "Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL  
cc  
bcc Juliet E. Thompson/EAC/GOV  
Subject Re: Research Grants

Hans,

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Julie tells me that she had a wide-ranging discussion with you last week but you never brought this issue up. It's too bad, as it may have prevented you from sending an e-mail to so many people that contains only half the story.

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



"Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
"rmartinez@eac.gov" <rmartinez@eac.gov>,  
"pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>,  
"ddavison@eac.gov" <ddavison@eac.gov>  
cc "christopher [REDACTED]"

026148



<christopher@...>, "bkaufman@..."  
<bkaufman@...>, "dewis@..."  
<dewis@...>, "tjstree@..."  
<tjstree@...>, "wrkliner@..."  
<wrkliner@...>

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026149

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U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026150



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

10/19/2005 09:49 AM

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

cc

bcc

Subject RE: Research Grants

History

This message has been forwarded.

perhaps if the Board of Advisors were kept better informed, I would not have been put into this position.

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

From: pdegregorio@eac.gov [mailto:pdegregorio@eac.gov]  
Sent: Tuesday, October 18, 2005 5:18 PM  
To: von Spakovsky, Hans (CRT)  
Subject: Re: Research Grants  
Importance: High

Hans,

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026151

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"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To

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<rmartinez@eac.gov>, "pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>, "ddavison@eac.gov"  
<ddavison@eac.gov>

CC

"christopher" <christopher>,  
"bkaufman" <bkaufman>,  
"dlewis" <dlewis>,  
"tjsthree" <tjsthree>, "wrklinerjr@" <wrklinerjr@>

Subject

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026152

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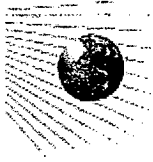
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Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026153





Paul DeGregorio /EAC/GOV  
10/25/2005 05:07 PM

To Karen Lynn-Dyson  
cc  
bcc  
Subject Fw: Research Grants

see e-mail traffic below

— Forwarded by Paul DeGregorio/EAC/GOV on 10/25/2005 05:07 PM —



"Hans.von.Spakovsky@usdoj  
.gov"  
<Hans.von.Spakovsky@usdoj  
j.gov>  
10/19/2005 09:49 AM

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
Subject RE: Research Grants

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Subject: Re: Research Grants  
Importance: High

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026154

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Paul DeGregorio  
Vice Chairman  
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"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To

"gmhillman@eac.gov" <gmhillman@eac.gov>, "rmartinez@eac.gov"  
<rmartinez@eac.gov>, "pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>, "ddavison@eac.gov"  
<ddavison@eac.gov>

CC

"christopher [REDACTED]" <christophert [REDACTED]>,  
"bkaufman [REDACTED]" <bkaufman [REDACTED]>,  
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026155

"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.'"

"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."

"...voters are individually disenfranchised by continued, often race based, voter intimidation and deceptive practices..."

Carter-Baker Report: Some Bad Fixes for the Wrong Problem, 9/19/2005

"The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities...Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?"

Voter ID and Fraud: Prove It, 7/28/2005

There are numerous more examples of her partisan opinions and attacks and demonstrably false claims against Republicans and election officials in general, such as her baseless charge in another article that "partisan election officials and party leaders usurped the process and manipulated the new federal voting law in ways that disenfranchised voters." Election 2004: A Report Card, 1/1/2005. The idea that she will write an objective report on issues that she has already expressed such strong opinions on ("there is no evidence that such election fraud is a serious problem") is hard to accept. I find it surprising that the EAC would award her a research grant or expect that election officials around the country would accept as valid a report written by an individual who asserts that "[a]t every step of the way, election officials in key states threw up unnecessary barriers to voting." Id. This gratuitous remark is an insult to the many hard-working election officials that we all know through our work who did everything they could during the last election to improve the election process and in large part succeeded.

Whatever procedures the EAC has set up to screen individuals and entities applying for research grants is obviously not working. I have no doubt that I could today, based on reading Ms. Wang's prior opinions, predict exactly what her report will conclude on the issues of voter fraud and voter intimidation. This situation needs to be corrected so that research is not being conducted by partisan individuals with preset opinions and views on issues. As with my prior email, I strongly recommend that the EAC reconsider the awarding of this contract.

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General


026156

Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026157

Karen Lynn-Dyson/EAC/GOV  
10/25/2005 05:36 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Research Grants 

So, did he "retract" his statement to his colleagues on the Board of Advisors, or have they, at least, been informed that Tova has been teamed with Job?

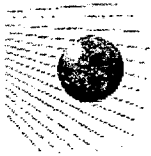
Also- does Hans know how to say " mea culpa"  
:-)

Thanks for passing this on.

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

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/25/2005 05:07 PM

To Karen Lynn-Dyson/EAC/GOV  
cc  
Subject Fw: Research Grants

see e-mail traffic below

— Forwarded by Paul DeGregorio/EAC/GOV on 10/25/2005 05:07 PM —



"Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>  
10/19/2005 09:49 AM

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
Subject RE: Research Grants

perhaps if the Board of Advisors were kept better informed, I would not have been put into this position.

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

From: pdegregorio@eac.gov [mailto:pdegregorio@eac.gov]  
Sent: Tuesday, October 18, 2005 5:18 PM  
To: von Spakovsky, Hans (CRT)  
Subject: Re: Research Grants  
Importance: High

026158

Hans,

I wish you would have shown us the decency to have spoken to someone at the EAC before you sent this e-mail. Had you done so, you might have discovered that Ms. Wang was paired with Job Serebrov, a conservative attorney who, like you, has served on a local election board (Washington, Co, AK -Fayetteville). He has also worked on voting issues and election law in his practice, including voter fraud. He was counsel to the Arkansas GOP on ballot integrity issues and was the ballot protection specialist for Mike Hucabee in his campaign for Lt. Governor. In addition, Job formed and ran "Arkansans for Fair Elections", a non-partisan group that looked to investigate and prevent voter fraud issues. He headed that group for 8 years. Job served the Republican Party of Arkansas as the Chairman of the Committee for the Revision of the State Constitution.

Thor Hearne called me last week to indicate that Job had called him to be on the working group that Job and Ms. Wang are putting together to look at the voter fraud/voter intimidation issues.

Job was recommended to the EAC for this work by Julie Thompson. His references included two US 8th Circuit judges appointed by GOP presidents: Morris Arnold and Lavenski Smith.

You may recall that the Advisory Board made it clear to the EAC that they thought the Voter Fraud/Voter Intimidation issues should be studied together. That's why Ms. Wang has been paired with Mr. Serebrov to do this study.

Julie tells me that she had a wide-ranging discussion with you last week but you never brought this issue up. It's too bad, as it may have prevented you from sending an e-mail to so many people that contains only half the story.

Paul DeGregorio  
Vice 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

"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To

"gmhillman@eac.gov" <gmhillman@eac.gov>, "rmartinez@eac.gov"  
<rmartinez@eac.gov>, "pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>, "ddavison@eac.gov"  
<ddavison@eac.gov>

026159

cc

"'christophert[REDACTED]v'" <christophert[REDACTED]>,  
"'bkaufman[REDACTED]'" <bkaufman[REDACTED]>,  
"'dlewis[REDACTED]'" <dlewis[REDACTED]>,  
"'tjsthree[REDACTED]'" <tjsthree[REDACTED]>, "'wrklinerjr[REDACTED]m'"  
<wrklinerjr[REDACTED]om>

Subject

Research Grants

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Voter ID and Fraud: Prove It, 7/28/2005

026160

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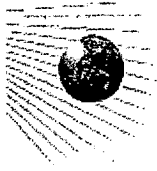
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Hans A. von Spakovsky  
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Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026161





Paul DeGregorio /EAC/GOV

11/09/2005 11:28 AM

To Gracia Hillman, Donetta Davidson (EAC), Raymundo  
Martinez, Juliet Thompson, Thomas R. Wilkey (EAC)  
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.

Paul DeGregorio  
Vice Chairman  
US Election Assistance Commission  
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Suite 1100  
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202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

026162



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 dissappointing 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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www.eac.gov

026163

Karen Lynn-Dyson/EAC/GOV  
05/16/2006 04:50 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,  
Adam Ambrogi/EAC/GOV@EAC, Bert A.  
bcc  
Subject Receipt of Eagleton Voter Identification paper by tomorrow at  
9:00 AM

Commissioners-

I just received a call from Tom O'Neill, Project Manager for the Eagleton/Moritz contract, indicating that the peer review team has not completed their final review of the Voter Identification paper. They are scheduled to have a conference call at 9:00 PM tonight to go over the final review.

I am told I will receive the final Voter Id paper by 9:00 AM, tomorrow morning .

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

026164



**U.S. ELECTION ASSISTANCE COMMISSION  
STANDARDS BOARD**

**RESOLUTION 2006-01**

WHEREAS, the U.S. Election Assistance Commission is conducting studies and research on a wide variety of subjects related to elections.

RESOLVED that the Standards Board recommends—

- The EAC carefully review each study and recommendation of researchers to ensure that findings are based on facts that are clearly defended by quantitative data, rather than suspicions or assumptions;
- The EAC require researchers to study and report on the practicality and expense of implementing each recommendation;
- Election Day survey questions be considered and completed and noticed to states no later than two years before the election in which the data is to be collected.

026165



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

026166



Gracia Hillman /EAC/GOV

10/30/2006 03:59 PM

To pdegregorio@eac.gov

cc Ddavidson@eac.gov

bcc

Subject Meeting with EAC Staff

History

This message has been replied to

FYI - Donetta and I had a good session with EAC staff this morning. We took the liberty of saying that our comments reflected your sentiments as well.

We thanked the staff for its hard work and continued dedication. We discussed the need for EAC to have a rapid response capability when issues arise that warrant an EAC response. We talked about how details matter; the importance of all press calls being routed to Jeannie (or Bryan) and all inquiries from Congress being routed to Julie; and not reporting or answering questions on another staff person's area of responsibility. We also discussed that everything we do is governed by HAVA and EAC policies and procedures and that staff should be diligent to check this information as they work on their projects.

We briefed about the Fraud Report firestorm; the news reports of Sequoia; and asked Tom to make sure that staff receive copies of the information that we are sending to Election Officials about the Sequoia story.

We emphasized that we know that the commissioners set the culture for the staff's work environment and that we wanted them to know what we are saying and how and why we respond the way we do to various inquiries.

I also briefed about upcoming changes in the members of the commission, explaining that while we know there will be changes, we don't know exactly when the new commissioners will come on board. I explained that I am in hold over status.

I think this summary covers the main points pretty well. The feedback I received is that the session was appreciated and well received by staff

026167

Calendar Entry

# Meeting Invitation Juliet E. Hodgkins has invited you to a meeting

<b>Subject</b>	Draft Fraud and Intimidation Report Briefing	<b>Chair</b>	Juliet E. Hodgkins/EAC/GOV
<b>When</b>	<b>Date:</b> Wednesday 11/29/2006 <b>Time:</b> 10:30 AM - 11:30 AM (1 hour)	<b>Invitees</b>	<b>Required (to)</b> Donetta Davidson, Gracia Hillman/EAC/GOV@EAC, Paul Bert A. <b>Optional (cc)</b> Benavides/EAC/GOV@EAC, Eliéen L.
<b>Where</b>	Small Conference Room		

026168

Karen Lynn-Dyson/EAC/GOV

11/29/2006 03:28 PM

To EAC Personnel

cc

bcc

Subject Urgent-- FOIA Request Eagleton materials

All-

As everyone knows, we have a FOIA request which involves, in part, materials from the Eagleton/Moritz contract.

In an effort to pull these materials together I have gone to the EAC Contracts file (located outside of Tom's office) only to discover one of the binders is missing. The binder was there last week and is now missing.

If you have this Eagleton Contract Binder 1 (4 inches thick) please return to me ASAP.

Thanks

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

026169



Bryan Whitener /EAC/GOV  
12/06/2006 03:15 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Thomas R.  
cc Jeannie Layson/EAC/GOV@EAC, genny.lamboley [REDACTED], harrison.keith [REDACTED], jennifer.roseutley [REDACTED], kate.houston [REDACTED]  
bcc

Subject For your approval - News Releases, Fact Sheet & Letter

Commissioners / Tom:

With your approval, we would like to issue the following two news releases at the conclusion of Thursday's public meeting. Also attached is a draft Q&A sheet on the certification program for internal reference. I have attached them here and pasted the text below. I've also copied Burson-Marsteller. Please let us know if any changes should be made.

**Draft Press Release - EAC Releases Findings of Voting Fraud and Voter Intimidation Study**



EAC News Release ( 12-7-06 ) Fraud Report Adopted - 2.doc

**Draft Press Release - EAC Approves Voting System Testing & Certification Program Standards**



EAC News Release ( 12-7-06 ) Cert Program Adopted - 1.doc

**Draft Q&A - EAC's Testing and Certification Program for Voting Systems (internal reference only)**



Revised Certification QA v2 ( BH rev ).doc

###

**Draft Press Release - EAC Releases Findings of Voting Fraud and Voter Intimidation Study**

No consensus on the regularity of voting fraud and voting intimidation found  
Agency accepts recommendations to conduct a comprehensive study on elections crimes

WASHINGTON - The United States Election Assistance Commission (EAC) today voted on the findings of the "Voting Fraud and Voter Intimidation Study" and accepted recommendations to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

The study represents the first phase of the information gathering process. The second phase, which the EAC voted to proceed with, is a more comprehensive data-driven survey and study of elections crimes and voter intimidation and will also offer consistency to the study and the public dialogue of the issue identifying a common definition of the issue for the use of elections officials, civil rights and voter advocacy groups, law enforcement officials and attorneys.

The recommendations accepted by EAC today include:

- Survey Chief Elections Officers to Review and Assess Administrative Complaints: EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004.

026170

- **Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred:** EAC will 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.
- **Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes:** 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.
- **Analyze Survey Data in Light of State Laws and Procedures:** EAC will use the reliable data gathered from each survey group to analyze the effectiveness of fraud prevention and reporting measures.

In order to arrive at the findings, EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field regarding their experiences and research. According to the findings, while there is currently no consensus on the frequency of voting fraud and voter intimidation, most participants agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud.

Following today's vote to approve the survey recommendations, EAC will begin a comprehensive survey and subsequent study on voting fraud and voter intimidation based on hard data. Section 241 of the Help America Vote Act of 2002 (HAVA) mandates that EAC research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC in consultation with the Standards Board and Board of Advisors selected voting fraud and voter intimidation from a list of potential research topics that serve to improve the administration of elections for federal office.

For the EAC's full report on the Voting Fraud and Voter Intimidation Study or to view testimony from today's hearing, visit [www.eac.gov](http://www.eac.gov).

###

### **Draft Press Release - EAC Approves Voting System Testing & Certification Program Standards**

**New Program is First for Federal Government**

WASHINGTON - The United States Election Assistance Commission (EAC) today voted to approve a new voluntary program for the testing and certification of voting systems. Today's approval marks the first time that the Federal Government will have the authority to provide certification, decertification and recertification of voting system hardware and software used during the federal election process, and the accreditation of testing laboratories. The new program is scheduled for implementation beginning in January 2007.

"Election reform has made great improvements since the enactment of the Help America Vote Act in 2002," said Paul DeGregorio, Chairman of the Election Assistance Commission. "EAC's new testing and certification program is one more step in the federal election process to ensure the integrity and reliability of voting system operation."

A webcast of today's meeting can be accessed Friday at [www.eac.gov](http://www.eac.gov).

The new program which provides information and procedures to manufacturers for the testing and certification of voting systems consistent with the requirements of the Help America Vote Act (HAVA), also supports state certification programs and provides information and support to state elections officials for acceptance testing and pre-election system verification, and increased quality control in voting system manufacturing and increased voter confidence in the use of electronic voting systems.

**026171**

Under the new program the National Institute of Standards and Technology (NIST) will assist EAC through the National Voluntary Laboratory Accreditation Program (NVLAP), which will provide recommendations to EAC for final determination regarding the accreditation of laboratories used to test voting systems.

While participation in EAC's new voting system testing and certification program is voluntary, states and manufacturers are encouraged to send their machines through the new program to ensure an added layer of security and protection against voting irregularities. States and voting system manufacturers that choose to participate in the program must comply with the program's mandatory procedural requirements, which will include random reviews and spot checks of voting systems currently used in the field through EAC's Quality Monitoring Program to ensure that those systems match the records of systems certified by EAC.

Voting systems that do not meet the requirements of the EAC Voluntary Voting System Guideline standards risk being decertified and will be removed from EAC's list of certified voting systems. Additionally, laboratories will be held accountable under the accreditation requirements and international lab standards and could risk losing accreditation by both EAC and NVLAP if a violation of those standards occurs.

Prior to the passage of HAVA, voting systems were assessed and qualified by the National Association of State Elections Directors (NASSED), a non-partisan association consisting of elections directors nationwide. EAC developed the new voting system testing and certification program in response to required mandates under HAVA, which was enacted in 2002. To date, approximately 40 states currently require voting systems to be certified at the national level.

###

**Draft Q&A - EAC's Testing and Certification Program for Voting Systems (internal reference only)**

#### **EAC's Testing and Certification Program for Voting Systems**

Prior to the passage of The Help America Vote Act (HAVA), voting systems were assessed and qualified by The National Association of State Election Directors (NASSED), a nonpartisan association consisting of election directors nationwide. These voting systems were tested against the 1990 and 2002 voting system standards.

In 2005, the Election Assistance Commission (EAC) adopted the first set of voluntary voting system guidelines, as mandated under HAVA. HAVA also requires that EAC provide certification, decertification, and recertification of voting systems and the accreditation of testing laboratories, marking the first time the federal government will be responsible for these activities. Under HAVA, NIST will assist the EAC with the certification program through its National Voluntary Laboratory Accreditation Program (NVLAP), and will provide recommendations to the EAC regarding laboratory accreditation. EAC will make the final decision to accredit laboratories based upon the information provided by NVLAP. Participation by states in EAC's certification program is voluntary; however, most states currently require national certification for the voting systems used in their jurisdictions.

#### **EAC's Voting System Testing and Certification Program**

In July 2006, EAC adopted a two phase implementation of its Voting System Testing and Certification Program. The two phases consist of (1) the pre-election or interim phase, and (2) the full testing and certification program. The interim phase began in July, and covers only modifications to voting systems. EAC Commissioners will vote today to approve adoption of the full program. If approved, implementation of the full program will begin in January 2007.

The purpose of EAC's national voting system certification program is to independently verify that voting systems comply with the functional capabilities, accessibility, and security requirements necessary to

026172

ensure the integrity and reliability of voting system operation.

## Frequently Asked Questions

Q: How long has the federal government tested voting equipment?

A: The Help America Vote Act (HAVA) ushered in federal assistance for the certification of voting equipment for the first time, tasking EAC and the National Institute of Standards and Technology (NIST) to partner in implementing and administering the program.

Q: Who had the authority to certify voting equipment in the past?

A: In the past, voting systems have been reviewed and certified by the National Association of State Election Directors (NASSED). NASSED performed this service on a volunteer basis and received no federal funding. Most of the voting systems in use today were qualified by NASSED.

Q: How will the certification process work?

A: Under HAVA, NIST and the EAC are jointly responsible for creating the voluntary voting system guidelines. These guidelines include a set of specifications and requirements against which voting systems can be tested to determine if the systems provide all of the basic functionality, accessibility and security capabilities required of these systems. In addition, the guidelines establish evaluation criteria for the national certification of voting systems. NIST assists the EAC with the certification program through its National Voluntary Laboratory Accreditation Program (NVLAP), which will provide recommendations to the EAC regarding laboratory accreditation. After EAC receives the recommendations from NVLAP, the agency's executive director will make the final determination regarding test lab accreditation.

Q: Why will manufacturers be allowed to pay test labs directly?

A: EAC does not have the legal authority to collect money from voting system manufacturers to pay for the testing of voting systems. (see 31 U.S.C. §3302(b), Miscellaneous Receipts Act). However, if Congress grants the EAC statutory authority to collect and use such funds, we would certainly consider alternative approaches.

Q: Why will manufacturers be allowed to choose which test lab to use?

A: Regardless of which lab conducts the work, all labs will be held accountable under the accreditation requirements and international lab standards. If a lab violates either EAC policy or the international standards, it could risk losing its accreditation by both EAC and NVLAP. The concept of manufacturers contracting with independent test labs is consistent with numerous other federal government and private sector testing programs.

Q: Will the source code be available to the public?

A: EAC will make all information available to the public consistent with federal law. EAC is prohibited under the Trade Secrets Act (18 U.S.C. §1905) from making the source code information available to the public. However, as necessary, the test labs and EAC's technical reviewers will examine the source code to ensure compliance with the voluntary voting system guidelines.

Q: What does EAC's interim accreditation program cover?

A: EAC's interim program issued temporary accreditation to test labs to check modifications to voting systems currently in use. In order to participate in the program, labs applying for interim certification had to attest to a set of EAC required laboratory conditions and practices. EAC requirements for these labs included certifying the integrity of personnel; no conflicts of interest, which covers not only personnel but also their immediate family; as well as the financial stability of the laboratory. EAC hired a NVLAP-trained assessor to verify that these labs successfully met the 17025 standards set by the International Standards Organization. Interim accreditation was necessary to ensure there was no interruption in this process leading up to the November 2006 elections, as NVLAP is currently completing the process of accrediting labs under the HAVA-required program.

Q: Will EAC track problems that occur in the field?

A: Absolutely. EAC's certification program establishes accountability through its Quality Monitoring Program which ensures, through various check points, that the voting systems used in the field are in fact the same systems EAC has certified. For instance, under the program, EAC has the ability to conduct site visits to production facilities to determine whether systems produced are consistent with those that have received EAC certification. EAC will collect reports from election officials regarding voting system anomalies. After reviewing the reports, EAC will share credible information with election officials. In addition, upon invitation or with permission from election officials, EAC will conduct reviews of systems that are in use in the field.

Q: Did EAC track problems that occurred during the November 2006 election?

A: EAC's full certification program will be implemented in early 2007; however, EAC did work with elections officials throughout the country to track potential issues and concerns. As we move forward with implementation of the full program, we will continue to work with election officials to share information and provide assistance.

Q: Why didn't EAC vote to adopt the full certification program prior to the November 2006 election?

A: EAC began its first year of operation in 2004, and the first priority under HAVA was the adoption of voluntary voting system guidelines. EAC adopted the guidelines in 2005, meeting the HAVA-mandated deadline. Resources and staff allocation dictated that EAC begin developing the certification program immediately following the adoption of the guidelines.

Q: Will EAC make test reports available to the public?

A: EAC will make test reports and all related information available to the public consistent with federal law.

Q: Under the EAC certification program, will there be any repercussions for a manufacturer that misrepresents its product or refuses to address valid system failures?

A: For the first time, manufacturers will be held accountable through not only the Quality Monitoring Program, but also under the decertification process, which would be the ultimate sanction against a manufacturer. If a system is decertified, the manufacturer may not represent the system as being certified, may not label the system as certified, and the system will be removed from the EAC's list of certified voting systems. Election officials will be notified about the decertification.

Q: Do states have to use voting systems that have been certified by the EAC?

A: According to HAVA, participation in EAC's certification program is voluntary. However, approximately 40 states have required that voting systems used in their jurisdictions to have a national certification.

###

026174



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

For Immediate Release  
December 7, 2006

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

## **EAC Releases Findings of Voting Fraud and Voter Intimidation Study**

*No consensus on the regularity of voting fraud and voting intimidation found  
Agency accepts recommendations to conduct a comprehensive study on elections crimes*

**WASHINGTON** – The United States Election Assistance Commission (EAC) today voted on the findings of the “Voting Fraud and Voter Intimidation Study” and accepted recommendations to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

The study represents the first phase of the information gathering process. The second phase, which the EAC voted to proceed with, is a more comprehensive data-driven survey and study of elections crimes and voter intimidation and will also offer consistency to the study and the public dialogue of the issue identifying a common definition of the issue for the use of elections officials, civil rights and voter advocacy groups, law enforcement officials and attorneys.

The recommendations accepted by EAC today include:

- **Survey Chief Elections Officers to Review and Assess Administrative Complaints:** EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004.
- **Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred:** EAC will 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.
- **Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes:** 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.
- **Analyze Survey Data in Light of State Laws and Procedures:** EAC will use the reliable data gathered from each survey group to analyze the effectiveness of fraud prevention and reporting measures.

026175

In order to arrive at the findings, EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field regarding their experiences and research. According to the findings, while there is currently no consensus on the frequency of voting fraud and voter intimidation, most participants agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud.

Following today's vote to approve the survey recommendations, EAC will begin a comprehensive survey and subsequent study on voting fraud and voter intimidation based on hard data. Section 241 of the Help America Vote Act of 2002 (HAVA) mandates that EAC research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC in consultation with the Standards Board and Board of Advisors selected voting fraud and voter intimidation from a list of potential research topics that serve to improve the administration of elections for federal office.

For the EAC's full report on the Voting Fraud and Voter Intimidation Study or to view testimony from today's hearing, visit [www.eac.gov](http://www.eac.gov).

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 three EAC commissioners are Paul DeGregorio, chairman; Donetta Davidson and Gracia Hillman. One vacancy currently exists.

###

026176



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

For Immediate Release  
December 7, 2006

Contact: Jeannie Layson  
Bryan Whitener  
(202) 566-3100

## **EAC Approves Voting System Testing & Certification Program Standards** *New Program is First for Federal Government*

**WASHINGTON** – The United States Election Assistance Commission (EAC) today voted to approve a new voluntary program for the testing and certification of voting systems. Today’s approval marks the first time that the Federal Government will have the authority to provide certification, decertification and recertification of voting system hardware and software used during the federal election process, and the accreditation of testing laboratories. The new program is scheduled for implementation beginning in January 2007.

“Election reform has made great improvements since the enactment of the Help America Vote Act in 2002,” said Paul DeGregorio, Chairman of the Election Assistance Commission. “EAC’s new testing and certification program is one more step in the federal election process to ensure the integrity and reliability of voting system operation.”

*A webcast of today’s meeting can be accessed Friday at [www.eac.gov](http://www.eac.gov).*

The new program which provides information and procedures to manufacturers for the testing and certification of voting systems consistent with the requirements of the Help America Vote Act (HAVA), also supports state certification programs and provides information and support to state elections officials for acceptance testing and pre-election system verification, and increased quality control in voting system manufacturing and increased voter confidence in the use of electronic voting systems.

Under the new program the National Institute of Standards and Technology (NIST) will assist EAC through the National Voluntary Laboratory Accreditation Program (NVLAP), which will provide recommendations to EAC for final determination regarding the accreditation of laboratories used to test voting systems.

While participation in EAC’s new voting system testing and certification program is voluntary, states and manufacturers are encouraged to send their machines through the new program to ensure an added layer of security and protection against voting irregularities. States and voting system manufacturers that choose to participate in the program must comply with the program’s mandatory procedural requirements, which will include random reviews and spot checks of voting systems currently used in the field through EAC’s Quality Monitoring Program to ensure that those systems match the records of systems certified by EAC.

026177



Voting systems that do not meet the requirements of the EAC Voluntary Voting System Guideline standards risk being decertified and will be removed from EAC's list of certified voting systems. Additionally, laboratories will be held accountable under the accreditation requirements and international lab standards and could risk losing accreditation by both EAC and NVLAP if a violation of those standards occurs.

Prior to the passage of HAVA, voting systems were assessed and qualified by the National Association of State Elections Directors (NASED), a non-partisan association consisting of elections directors nationwide. EAC developed the new voting system testing and certification program in response to required mandates under HAVA, which was enacted in 2002. To date, approximately 40 states currently require voting systems to be certified at the national level.

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 three EAC commissioners are Paul DeGregorio, chairman; Donetta Davidson and Gracia Hillman. One vacancy currently exists.

###

026178



## **EAC's Testing and Certification Program for Voting Systems**

Prior to the passage of The Help America Vote Act (HAVA), voting systems were assessed and qualified by The National Association of State Election Directors (NASSED), a nonpartisan association consisting of election directors nationwide. These voting systems were tested against the 1990 and 2002 voting system standards.

In 2005, the Election Assistance Commission (EAC) adopted the first set of voluntary voting system guidelines, as mandated under HAVA. HAVA also requires that EAC provide certification, decertification, and recertification of voting systems and the accreditation of testing laboratories, marking the first time the federal government will be responsible for these activities. Under HAVA, NIST will assist the EAC with the certification program through its National Voluntary Laboratory Accreditation Program (NVLAP), and will provide recommendations to the EAC regarding laboratory accreditation. EAC will make the final decision to accredit laboratories based upon the information provided by NVLAP. Participation by states in EAC's certification program is voluntary; however, most states currently require national certification for the voting systems used in their jurisdictions.

### **EAC's Voting System Testing and Certification Program**

In July 2006, EAC adopted a two phase implementation of its Voting System Testing and Certification Program. The two phases consist of (1) the pre-election or interim phase, and (2) the full testing and certification program. The interim phase began in July, and covers only modifications to voting systems. EAC Commissioners will vote today to approve adoption of the full program. If approved, implementation of the full program will begin in January 2007.

The purpose of EAC's national voting system certification program is to independently verify that voting systems comply with the functional capabilities, accessibility, and security requirements necessary to ensure the integrity and reliability of voting system operation.

## Frequently Asked Questions

**Q: How long has the federal government tested voting equipment?**

A: The Help America Vote Act (HAVA) ushered in federal assistance for the certification of voting equipment for the first time, tasking EAC and the National Institute of Standards and Technology (NIST) to partner in implementing and administering the program.

**Q: Who had the authority to certify voting equipment in the past?**

A: In the past, voting systems have been reviewed and certified by the National Association of State Election Directors (NASED). NASED performed this service on a volunteer basis and received no federal funding. Most of the voting systems in use today were qualified by NASED.

**Q: How will the certification process work?**

A: Under HAVA, NIST and the EAC are jointly responsible for creating the voluntary voting system guidelines. These guidelines include a set of specifications and requirements against which voting systems can be tested to determine if the systems provide all of the basic functionality, accessibility and security capabilities required of these systems. In addition, the guidelines establish evaluation criteria for the national certification of voting systems. NIST assists the EAC with the certification program through its National Voluntary Laboratory Accreditation Program (NVLAP), which will provide recommendations to the EAC regarding laboratory accreditation. After EAC receives the recommendations from NVLAP, the agency's executive director will make the final determination regarding test lab accreditation.

**Q: Why will manufacturers be allowed to pay test labs directly?**

A: EAC does not have the legal authority to collect money from voting system manufacturers to pay for the testing of voting systems. (see 31 U.S.C. §3302(b), *Miscellaneous Receipts Act*). However, if Congress grants the EAC statutory authority to collect and use such funds, we would certainly consider alternative approaches.

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**Q: Will the source code be available to the public?**

A: EAC will make all information available to the public consistent with federal law. EAC is prohibited under the Trade Secrets Act (18 U.S.C. §1905) from making the source code information available to the public. However, as necessary, the test labs and EAC's technical reviewers will examine the source code to ensure compliance with the voluntary voting system guidelines.

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**A:** EAC's interim program issued temporary accreditation to test labs to check modifications to voting systems currently in use. In order to participate in the program, labs applying for interim certification had to attest to a set of EAC required laboratory conditions and practices. EAC requirements for these labs included certifying the integrity of personnel; no conflicts of interest, which covers not only personnel but also their immediate family; as well as the financial stability of the laboratory. EAC hired a NVLAP-trained assessor to verify that these labs successfully met the 17025 standards set by the International Standards Organization. Interim accreditation was necessary to ensure there was no interruption in this process leading up to the November 2006 elections, as NVLAP is currently completing the process of accrediting labs under the HAVA-required program.

**Q; Will EAC track problems that occur in the field?**

**A:** Absolutely. EAC's certification program establishes accountability through its Quality Monitoring Program which ensures, through various check points, that the voting systems used in the field are in fact the same systems EAC has certified. For instance, under the program, EAC has the ability to conduct site visits to production facilities to determine whether systems produced are consistent with those that have received EAC certification. EAC will collect reports from election officials regarding voting system anomalies. After reviewing the reports, EAC will share credible information with election officials. In addition, upon invitation or with permission from election officials, EAC will conduct reviews of systems that are in use in the field.

**Q: Did EAC track problems that occurred during the November 2006 election?**

**A:** EAC's full certification program will be implemented in early 2007; however, EAC did work with elections officials throughout the country to track potential issues and concerns. As we move forward with implementation of the full program, we will continue to work with election officials to share information and provide assistance.

**Q: Why didn't EAC vote to adopt the full certification program prior to the November 2006 election?**

**A:** EAC began its first year of operation in 2004, and the first priority under HAVA was the adoption of voluntary voting system guidelines. EAC adopted the guidelines in 2005, meeting the HAVA-mandated deadline. Resources and staff allocation dictated that EAC begin developing the certification program immediately following the adoption of the guidelines.

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**A:** For the first time, manufacturers will be held accountable through not only the Quality Monitoring Program, but also under the decertification process, which would be the ultimate sanction against a manufacturer. If a system is decertified, the manufacturer may not represent the system as being certified, may not label the system as certified, and the system will be removed from the EAC's list of certified voting systems. Election officials will be notified about the decertification.

**Q: Do states have to use voting systems that have been certified by the EAC?**

**A:** According to HAVA, participation in EAC's certification program is voluntary. However, approximately 40 states have required that voting systems used in their jurisdictions to have a national certification.



"Bryan Whitener"  
<bwhitener@eac.gov>  
12/07/2006 02:42 PM

To pdegregorio@eac.gov  
cc  
bcc  
Subject EAC Releases Findings of Voting Fraud and Voter  
Intimidation Study, 12-07-06

U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

---

**For Immediate Release**

December 7, 2006

Contact:  
Jeannie Layson  
Bryan Whitener  
(202) 566-3100

**EAC Releases Findings of Voting Fraud and Voter  
Intimidation Study**

***No consensus on the regularity of voting fraud and voting intimidation found  
Agency accepts recommendations to conduct a comprehensive study on elections crimes***

**WASHINGTON** - The United States Election Assistance Commission (EAC) today voted on the findings of the "Voting Fraud and Voter Intimidation Study" and accepted recommendations to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

The study represents the first phase of the information gathering process and includes a working definition of election crimes. EAC will now proceed with the second phase, a more comprehensive data-driven survey and study of elections crimes and voter intimidation. The new phase will offer consistency to the study and will identify a common definition of the issue for dialogue among elections officials, civil rights and voter advocacy groups, law enforcement officials, attorneys and the public.

026183

The recommendations accepted by EAC today include:

**Survey Chief Elections Officers to Review and Assess Administrative Complaints:** EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004.

**Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred:** EAC will 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.

**Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes:** 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.

**Analyze Survey Data in Light of State Laws and Procedures:** EAC will use the reliable data gathered from each survey group to analyze the effectiveness of fraud prevention and reporting measures.

In order to arrive at the findings, EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field regarding their experiences and research. According to the findings, while there is currently no consensus on the frequency of voting fraud and voter intimidation, most participants agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud.

Following today's vote to approve the survey recommendations, EAC will begin a comprehensive survey and subsequent study on voting fraud and voter intimidation based on hard data. Section 241 of the Help America Vote Act of 2002 (HAVA) mandates that EAC research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC in consultation with the Standards Board and Board of Advisors selected voting fraud and voter intimidation from a list of potential research topics that serve to improve the administration of elections for federal office.

For the EAC's full report on the Voting Fraud and Voter Intimidation Study or to view testimony from today's hearing, visit [www.eac.gov](http://www.eac.gov).

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 three EAC commissioners are Paul DeGregorio, chairman; Donetta Davidson and Gracia Hillman. One vacancy currently exists.

026184



"Douglas W. Jones"  
<jones@ [REDACTED]>  
12/12/2006 12:56 PM

To "Marcus Brand" [REDACTED]  
cc tarvi@ [REDACTED], rates@ [REDACTED],  
i\_shyrokova@ [REDACTED], pdegregorio@eac.gov,  
irena\_hadziabdic@ [REDACTED], kamen@ [REDACTED]  
bcc

Subject Vote fraud in NL

There is one topic that we did not mention in the report in any depth that is probably worth mentioning. It leads me to wonder if we overstated our positive confidence in the system.

Irina Shirokova and I met with Robert Loeb, member of the Council of State. He said that there is fraud in the Netherlands but that it is usually at the municipal level. He said that in 20 years, electronic voting had never led to any judicial questions.

However, that same day, Irina and I met with people from the Netherlands Committee of Jurists for Human Rights. There, we heard the story of a case that is currently being prosecuted. My notes from that meeting on this subject read as follows:

> They began with a comment on Rop Gonggrijp's work. Then they  
> presented a case of municipal corruption, in which a member  
> of the council in the town of Zeeland in Brabant was a polling  
> place worker and spent the election day standing not behind  
> but in front of the voting machine at the polling place. At  
> the end of the day, with about 1000 votes cast on that machine,  
> the totals showed 181 votes for him. A journalist from a  
> small local paper was suspicious and phoned a number of voters.  
> Only one admitted to voting for the man in question. The  
> prosecution of this case began in August, all voters were asked  
> how they voted, and 800 to 800 responded to the reply, few  
> indicating a vote for the man. A paper trail might have helped  
> in this case. TNO and Nedap have both checked the computer and  
> concluded that there is nothing wrong with it. One speculation  
> is that the man used the key switch to force the machine to  
> indicate "voting complete" (or some such) prematurely, allowing  
> him to slip into the booth and cast extra votes. The court  
> case will not mention the man's name unless he is convicted,  
> but in newspaper reports, the name is Mr. Te Meerman.

I did a web search on keywords from this incident and found significant coverage, all in Dutch. The keywords I used in Google were: zeeland brabant 181 meerman.

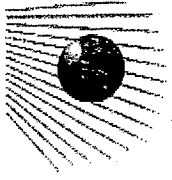
http:// [REDACTED]  
Brabants Dagblad  
(there are a total of 12 articles in this paper)

http:// [REDACTED]  
BITS OF FREEDOM Nieuwsbrief -- item 2 in this blog  
discusses this case, with several links.

Doug Jones  
jones@ [REDACTED]

026186





Paul DeGregorio /EAC/GOV  
12/13/2006 10:03 AM

To "GEORGE, Bruce"  
<GeorgeB@...>  
cc  
bcc

Subject EAC Fraud Report 

Dear Bruce,

I hope this note finds you well. I wanted you to know that the EAC recently released our initial study on voter fraud and intimidation. I have attached it to this e-mail. It can also be found, along with the four appendices, at our website: [www.eac.gov](http://www.eac.gov)

As you will see, the report brings the focus to a discussion of election crimes, along with some definitions. It also begs for more study in this area. I thought you might find the report and the appendices useful in your research on this topic.

I recently spent a two weeks in the Netherlands on an OSCE EAM mission to the Netherlands. Our leader was your good friend Julian Peel Yates. He did a fantastic job as head of the delegation.

Please give my best wishes to your wife. If the holidays take you to St. Louis, please let me know so that

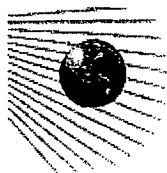


we can meet again. [EAC Voter Fraud and Intimidation Report Dec 2006.pdf](#)

All the best,

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](mailto:pdegregorio@eac.gov)  
[www.eac.gov](http://www.eac.gov)

026187



Paul DeGregorio /EAC/GOV  
02/09/2007 10:03 AM

To Paul Vinovich, Matt Peterson  
cc  
bcc  
Subject FYI-another "non-partisan" conference on election reform

*Please join the Leadership Conference on Civil Rights, Common Cause, the Center for American Progress Action Fund, and the Century Foundation for the first comprehensive review of problems that plagued voters in the 2006 election and a discussion of potential legislative solutions.*

## **ELECTIONS: LOOKING AHEAD**

During the 2006 elections, more than 50,000 voters called national election hotlines with troubles, while the press reported hundreds of additional voting problems, ranging from 18,000 missing votes in a Florida congressional race still being litigated, to long lines and voter intimidation tactics. Following on the heels of similar crisis-ridden elections of 2000 and 2004, voting problems in 2006 have created a public outcry for reform.

Election reform advocates will talk about the problems and release an agenda of solutions endorsed by numerous national organizations representing millions of voters.

### **Monday, February 12, 2007**

**Program:** 9:00am to 12:00pm

*Admission is free.*

Breakfast will be served at 8:30 a.m.

#### **Program:**

Introduction 9:00am - 9:15

**Wade Henderson**, President and CEO, The Leadership Conference on Civil Rights

Panel 1: Reporting on Problems in 2006 9:15am - 10:30am

**Moderator: Cassandra Butts**, Senior Vice President for Domestic Policy, Center for American Progress

**Ralph Neas**, President and CEO, People for the American Way

*Findings from the Election Protection Hotline*

**Melanie Campbell**, Executive Director and CEO, Coalition for Black Civic Participation

*Findings from 1-866-MY VOTE1 Voter Alert Line*

**Efrain Escobedo**, Director of Voter Engagement, National Association of Latino Elected and Appointed Officials

*Election Day Problems in the Latino Community*

**Dan Seligson**, Editor, Electionline.org

*Review of the 2006 Election*

**Heather Smith**, Executive Director, Young Voter Strategies

*Election Day Problems Among Young Voters*

Second Panel - Critical Election Reform Issues for the 110th Congress 10:45am - 12:00pm

**Moderator: Tova Wang**, Democracy Fellow, The Century Foundation

**Jonah Goldman**, Director of the National Campaign for Fair Elections, Lawyer's Committee for Civil Rights Under Law

026188

*Resisting Restrictive Voter Identification Laws and Proof of Citizenship Requirements*  
**Kristin Clarke-Avery**, Assistant Counsel in the Political Participation Group, NAACP Legal  
Defense and Education Fund

*Deterring and Punishing Voter Intimidation and Suppression*  
**Lillie Coney**, Associate Director, Electronic Privacy Information Center

*Insuring Accessible, Accurate, and Secure Voting Systems*  
**Wendy Weiser**, Deputy Director of Democracy Program, Brennan Center

*Insuring a Fair and Accurate Voter Registration System*  
**Barbara Burt**, Vice President and Director of Election Reform, Common Cause  
*Preventing Conflicts of Interest in Election Administration*

Closing 12:00pm - 12:05pm

**The Honorable Rush Holt** (D-NJ)

This forum is in the Capitol; therefore, photo ID is required. Enter at the southern most part of the Capitol building.

**The US Capitol**

Room HC-5

Washington, DC 20515

Map & Directions

**Nearest Metro:** Blue line to Capitol South or Red Line to Union Station

**RSVP for this Event**

For more information, please call 202.741.6246.

026189



"Thad Hall"  
[REDACTED]  
02/15/2007 12:29 AM

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
bcc

Subject Re: Fraud Book Introduction

History: This message has been replied to.

Paul: That is great. I am also curious to know if you are going to Estonia for their election.

Thad

On 2/14/07, [pdegregorio@eac.gov](mailto:pdegregorio@eac.gov) <pdegregorio@eac.gov> wrote:

Thad,

Thanks for your note and reminder on the introduction to the book. I'd be happy to do one with Ray if our ethics officer says it's OK to do so. I'll check.

Paul DeGregorio  
Commissioner  
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](mailto:pdegregorio@eac.gov)  
[www.eac.gov](http://www.eac.gov)

"Thad Hall" <[thadhall@gmail.com](mailto:thadhall@gmail.com)>  
>

02/13/2007 01:58 PM

To "[pdegregorio@eac.gov](mailto:pdegregorio@eac.gov)" <[pdegregorio@eac.gov](mailto:pdegregorio@eac.gov)>, "Ray Martinez" <[raymartinezlaw@msn.com](mailto:raymartinezlaw@msn.com)>  
cc  
Subject: Fraud Book Introduction  
t

026190

At the fraud conference in Salt Lake City, I mentioned to both of you that Mike, Susan Hyde and I would be very interested in having the two of you co-author a relatively short introduction to the book. We think that this will help to show the interest that exists among policy makers in the topic and help to bring the book to the center of the debate over election fraud. Would you both be able to do this? We can give you a draft copy of the volume to work with while the book is being reviewed at Brookings Institution Press so you would not need to have anything to us for probably 2 months.

Let me know if you have any questions.

Thanks to you both!

Thad

--

Thad Hall, Assistant Professor  
Dept. of Political Science, University of Utah

[REDACTED]

[REDACTED]

contributor to [http://\[REDACTED\]](http://[REDACTED])

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Thad Hall, Assistant Professor  
Dept. of Political Science, University of Utah

[REDACTED]

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contributor to [http://\[REDACTED\]](http://[REDACTED])

Bryan Whitener /EAC/GOV  
02/16/2007 05:24 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 2-16-07, Frid )

Commissioners:

Today we had the following media inquiries:

(1) The chair was interviewed by Rich Wolfe of USA Today about the voter ID research. She said we discussed the initial findings about voter ID at a public meeting b/c this is such an important issue that impacts voters in every corner of this country. She noted that the new voter ID laws have been enacted in many states in just a few short years, and that the initial work done by Eagleton only covered one election cycle, and she believed we must study this issue over at least two like elections (presidential) to determine if these new laws have had any impact. The chair said based on the initial work conducted by Eagleton, I've instructed staff to present to the commission w/n 30 days a plan for moving forward to continue studying the impact of voter ID. We will immediately release this plan to the public. He then asked about some of the election reform bills in Congress, specifically the points brought up during Sen. Feinstein's hearing. The chair pointed out that we need to make sure timelines are realistic -- election officials need to have time to make sure new laws will work. Implementation doesn't happen overnight. She said we need to make sure we can actually accomplish initiatives within the timeframes prescribed. She said states are always aware that they must first meet certification requirements, conduct mock elections and train staff before introducing new equipment.

(2) Dick Smolka of Election Administration Reports asked if EAC's meeting with voting equipment vendors on Tuesday was in response the Board of Advisors Resolution that EAC collect certain information from them. Brian Hancock replied that this was not the topic of the meeting and that he had not yet been instructed to collect the information requested in the resolution.

(3) Cara Matthews of Gannett News in Albany called to ask the latest about the possible loss of HAVA 102 funds by New York. We said that we are continuing to review the responses from all the states in the order they were received.

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026192

Bryan Whitener /EAC/GOV  
02/20/2007 05:33 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 2-20-07, Tues )

Commissioners:

Today we had the following media inquiries:

(1) Ken Vogel of Politico.com had questions about the new commissioners. He asked for background info on how the appointment/nomination process works, their terms of service, and their salaries, which we provided. We also provided background on EAC and our role per HAVA. He interviewed the chair regarding her opinion whether Ms. Hunter should have election admin. experience. The chair explained that 3 out of the original 4 commishes did not have this experience, but that they certainly had extensive knowledge of elections, including registration issues and election laws. She said Ms. Hunter was very familiar with election laws at both state and national levels, and that knowledge plus her training as an attorney would be especially beneficial to EAC. He asked if they had resigned their positions, and we said Ms. Hunter left the White House in late Oct., and Ms. Rodriguez is still serving on the City Council, and she would step down when she officially comes on board. He wanted to know if Ms. Rodriguez had election admin. experience, and we said yes, as a former clerk. He requested an interview with them, and after conferring w/Ms. Hunter and Ms. Rodriguez, we told him they would be glad to speak with him after they are officially on board. He asked how long that would be, and we referred him to the WH. He asked if we were talking weeks or months, and we said probably weeks. He wanted to know why we decertified Ciber, and we said we had not decertified Ciber. We explained the process, both interim and full. We then recounted all of the public meetings we'd had on the subject, and said we would continue to notify the public about this process, just as we always have.

(2) The chair was interviewed by Chris Drew of the NYT about the status of the voter ID research. She explained that based upon the preliminary findings of Eagleton, she had directed the staff to provide recommendations to the commission about how to proceed. She reiterated that this was an important subject, and that it was imperative to take a more comprehensive look since there are so many new voter ID laws in the states.

(3) Dick Smolka of Election Administration Reports asked the following questions regarding the EAC Standards Board and Board of Advisors. Q&A as follows:

Standards Board - What attendance do we expect for the Standards Board meeting ? 87 members have RSVP'd. What kind of notice did we give the new chief state election officials about their responsibilities for appointing SB members ? A letter was sent on January 9, 2007 with a notification of representation form. If so, what kind of notice and when did we give it? We asked members to respond with New appointment(s) information or to indicate No Change by January 17. All changes coming in after that date have been honored. The latest to be received is from Nevada.

Board of Advisors - How will appointments to the Board of Advisors and their length of terms be affected by the change in congressional leadership ? The members of the board will serve their terms, as they were reappointed recently. Also the majority and minority have equal representation so even though there was a change in the Congressional makeup, the members appointed by the former majority leaders may be appointed by the new minority members. It is written in the charter of the Board of Advisors which designates the distribution of the members equally by minority and majority. Did EAC give a heads up to the new congressional leadership about their role and responsibilities in appointing members to the Board of Advisors ? All of the members of the Board of Advisors have been reappointed to date. Their terms are for two years. The leadership will be made aware of their

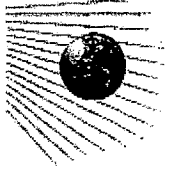
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new responsibilities to appoint. However, we also have another election coming up next year which could potentially change things again. But barring a power shift in Congress, the current members will retain their appointment responsibility. If so, what kind of notice and when did we give it? They will receive a letter from the office of the designated federal officer of the Board of Advisors, which is currently the Chair, Donetta Davidson.

####

026194





Paul DeGregorio /EAC/GOV  
08/17/2004 10:45 AM

To Daniel Murphy/EAC/GOV  
cc  
bcc  
Subject Fw: Best Practices Tool Kit on Voter ID, Polling Place  
Signage, etc.

Give me your feedback on this.

-----  
Sent from my BlackBerry Wireless Handheld  
Diane Savoy

**From:** Diane Savoy  
**Sent:** 08/17/2004 09:58 AM  
**To:** DeForest Soaries Jr.; Gracia Hillman; Raymundo Martinez; Paul  
DeGregorio  
**Subject:** Best Practices Tool Kit on Voter ID, Polling Place Signage, etc.

Attached below is the draft best practices document that Brian Hancock has drafted. He has informed me that Peggy is reviewing the administrative complaint procedure section so there may still be some additional edits from her. Brian has several examples of polling place signage that was sent to him in hard copy. They are all very large in size. He is checking to see if the states have an electronic copy and if they do not, he will prepare an electronic copy of many of them to add additional examples as links to the document. He will also draft a table of contents and introductory letter to go along with this document before it is finalized. Please review the attached and provide me any comments. Thank you.

L. Diane Savoy  
Consulting Chief of Staff  
U.S. Election Assistance Commission

e-mail: dsavoy@eac.gov  
phone: 202-566-3100  
fax: 202-566-1392



HAVA Toolkit Voter ID-Signage-Admin Complaint.doc

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## HAVA Best Practices Tool Kit on Voter Identification, Polling Place Signage and State Administrative Complaint Procedures

### Voter ID

Section 303(b) of the Help America Vote Act requires most individuals who register by mail and who have not previously voted in an election for Federal office in the state or who have not previously voted in such an election in the jurisdiction if the State is without a HAVA compliant statewide voter registration database, to present certain identification (ID) documents. Under this section, a voter may show either a current and valid photo identification to the appropriate election official when voting in person 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. If voting by mail, a copy of these documents must be submitted with the ballot.

Although state ID requirements vary somewhat, the 5 most common forms of photo identification required by states are:

1. a valid and current driver's license
2. a valid and current state ID card
3. a valid U.S. Passport
4. a valid and current Federal agency or military ID card
5. a valid student ID card

In addition, the 5 most common forms of non-photo ID required by states are:

1. a current utility bill with name and address
2. a current bank statement with name and address
3. a current paycheck with name and address
4. a Social Security Card
5. a valid voter registration card or certificate

States have also found a number of distinctive forms of identification which voters may show to meet the requirements of this section of HAVA. Ten (10) unique forms of ID documentation allowed by states are:

1. a valid tribal government ID card
2. a valid state license to carry a pistol or revolver
3. a valid pilots license
4. a certified copy of the electors birth certificate

5. a health club ID card
6. a public transportation authority senior citizens discount card issued by a government agency
7. a drug prescription issued by a government doctor or other government health care provider
8. a Buyer's Club ID card
9. a neighborhood association ID card
10. a retirement center ID card

Some states have also found other alternative methods of verifying a voter's identity. The state of Montana implemented their Voter Verification Service in the recent June 2004 Primary Election. Those individuals who arrived to vote without having the proper identification documentation were asked to fill out a form containing their last name, address, date-of-birth, driver's license number or the last 4 digits of their social security number. The election judge then calls the local election office which is able to access the State driver's services program via the internet to search the state drivers' database in order to find a match. State officials noted that over 600 individuals were able to vote a regular ballot after being verified by the system, and very few provisional ballots were required.

Many states report that they have not yet had enough experience implementing the voter ID provisions of HAVA to cite specific lessons learned. For those states that have had experience implementing these provisions, many of those who report no significant problems attribute their success to a proactive approach to collecting the required voter identification documentation. In New Mexico, individuals who failed to submit the proper ID documentation when they registered by mail are sent a letter reminding them of the required documentation and including a postage paid return envelope to enable the registrant to easily forward the required identification document prior to election day. A sample letter from San Juan County, New Mexico is included as *Attachment A* at the end of this report.

Maryland has also taken a proactive approach to collecting ID documentation by sending at least two letters about the new requirements to voters before the March 2004 Primary Election. The State Board of Elections also issued a press release and did some media outreach to inform the public of the new requirements.

Other states having experience implementing the voter ID requirements in recent state primary elections have observed some inconsistencies among their counties in the handling of voter ID documentation and with some poll workers asking all voters for ID documentation before voting. These states acknowledge that these types of issues can and will be addressed through more rigorous training for poll workers and through better communications between the state election office and the local election offices.

## Polling Place Signage

Section 302(b) of the Help America Vote Act requires the appropriate State or local election official to publicly post certain voting information at each polling place on the day of each Federal election. This information includes a sample ballot, information regarding the date of the election and the hours polling places will be open, instructions on how to cast a vote and how to cast a provisional ballot, instructions for mail-in registrants and first-time voters under section 303(b) of HAVA, general information on voting rights under Federal and state laws, including how to contact the appropriate officials to report violations of these rights, and general information on Federal and state laws regarding voter fraud and misrepresentation.

Most states have implemented these provisions through the production of posters or wall hangings ranging in size from 1/2" x 14" to as large as 3' x 4'. Several states are quite specific not only in describing which documents must be posted at the polling place, but also how many of each document must be posted. Arizona, for example requires that the following informational items are posted at each polling place:

- Two sample ballots
- Two copies of instruction
- Names of and write-in candidates
- Three 75-foot limit signs
- Vote marking polling place sign
- Four "Vote Here" signs
- Three "Instructions for Voter" signs
- Five instructions to voters and election officials signs regarding the right to vote a provisional ballot

In most states, the office of the chief state election official produces the informational materials required under HAVA, while the local election officials ensure that these materials are posted at all polling places in their jurisdictions. Sample ballot information, unlike most of the other required postings, changes from election to election and generally requires local election officials to both produce and post this election specific information.

Readability experts as well as most election officials agree that it is not enough to simply post information on the walls of a polling place and hope the voters are able to read and understand the important messages that these materials convey. In order for voters to effectively utilize the posted information, the materials must be designed with readability and usability in mind.

The following general principals of good design and readability contribute significantly in getting the intended message read and understood by the voting public.

### Document Layout

- Avoid producing a “sea of text.” A long uninterrupted page of text can be overwhelming for marginal readers and tiring for all readers.
- Break up the text with white space, headings and subheadings, space between paragraphs, bullets and numbering.
- Include wide margins at each side of your text to give the readers’ eye some “breathing room.”
- Avoid straight (“justified”) margins on both sides. With justified text every line is the same length and so they all look alike. “Ragged right” margins make it easier for readers to keep their place, and pace.

### Type Styles

- Long stretches of *italic type* or of **boldface type** or of underlined type are harder to read than normal type. These are good treatments for words or phrases you want to emphasize, but don’t use either one too often or they become very distracting.
- Sentences that are written all in CAPITAL LETTERS are hard to read even for good readers because every capital letter has nearly the same height and shape.
- Use dark ink. Some readers may have trouble reading text that is screened or in light ink. Long lines of “reversed” type (white type on a black background) can also be hard on the eyes, and therefore difficult for persons who are not strong readers.

## Readability

- Use shorter words. Use words with the least number of syllables, whenever you can. To marginal readers, there is a big difference between a two-syllable word and a four or five syllable word. For example, use *help* instead of *assistance*; use *copy* instead of *duplicate*; use *question* instead of *inquiry*.
- Use a word (or two) instead of a phrase. This practice is easier on all readers. For example use *about* instead of *with regard to*; use *if* instead of *in the event that*; use *under* instead of *in accordance with*.
- Keep sentences short. As a rule of thumb, fewer than ten words is ideal, up to fifteen words is more realistic, more than twenty words is too long. One way to keep sentences short is to cut needless words.
- Keep paragraphs to six or fewer sentences. In many instances, it is better to avoid formal paragraphs and instead turn text to a list of items with *bullets*, 1-2-3, or *a-b-c* order.
- Write in the active voice. Make the subject of your sentence do the action. For example, "*The application must be signed by the voter.*" is in the passive voice, while "*You must sign the application.*" is in the active voice. The active voice is shorter, more personal and more readable.

Additional information on how to improve the readability and usability of election forms and signage is available in *Innovations in Election Administration 13: Simplifying Election Forms and Materials*. This document was originally published by the Federal Election Commission in 1996, and is now available from the U.S. Election Assistance Commission by calling 1-866-747-1471.

Another resource for election officials seeking to improve the effectiveness of their polling place signage and election materials is the American Institute of Graphic Arts (AIGA). Through their initiative called Design for Democracy, AIGA has created a nonprofit organization dedicated to improving the quality, legibility and effectiveness of election materials. The design for Democracy team has worked extensively with election officials in Cook County, Illinois and with the state of Oregon to develop prototypes for improved ballot design, polling place signage, poll worker training and recruitment material, provisional voting documents and voter education materials.

A link to AIGA page on designing effective polling place signage can be accessed at: [http://electiondesign.org/pdf/d4d\\_polling\\_place\\_signage.pdf](http://electiondesign.org/pdf/d4d_polling_place_signage.pdf)

Several other steps are also worth considering when developing polling place signage.

- Any signs or similar materials produced in English must also be produced in the language of a qualified language minority group if the jurisdiction is covered by the bilingual election requirements of the Voting Rights Act. (42 U.S.C. 1973aa – 1a & 1973b(f)(4)).
- North Dakota notes that the posters they produce are also available in Braille to assist some blind voters, and some are available in an audio version through the State Library's Radio Reading Service.
- Washington State has also produced a video to supplement the information provided on poster size polling place signage. Each county has its own video filmed within that county explaining how to cast a ballot on the particular type of voting system used within that jurisdiction, and taking the voter through the entire voting process. These videos can also be accessed on the Washington Secretary of State's website at:  
[http://www.secstate.wa.gov/elections/voting\\_video.aspx](http://www.secstate.wa.gov/elections/voting_video.aspx)

Links to examples of HAVA required polling place signage can be accessed at:

**Minnesota** = <http://www.sos.state.mn.us/election/PollingPlacePosters.pdf>

**Indiana** = <http://www.state.in.us/sos/whatsnew/ivbr.pdf>

**Kansas** = [http://www.kssos.org/forms/elections/voter\\_rights.pdf](http://www.kssos.org/forms/elections/voter_rights.pdf)

[http://www.kssos.org/forms/elections/poster\\_spanish.pdf](http://www.kssos.org/forms/elections/poster_spanish.pdf)  
(Spanish version)

**Montana** = <http://sos.state.mt.us/Assets/elections/VoterBroR4.pdf>

**North Dakota** = <http://www.state.nd.us/hava/education/doc/voters-rights.pdf>

**Texas** = <http://www.sos.state.tx.us/elections/forms/2003voterposter.pdf>

**Vermont** = [http://vermont-elections.org/elections1/voter\\_rights.pdf](http://vermont-elections.org/elections1/voter_rights.pdf)

## Administrative Complaint Procedures

Section 402 of the Help America Vote Act requires the establishment of specific State-based administrative complaint procedures to remedy grievances.

HAVA requires that:

- The procedures are uniform and non-discriminatory
- The procedures are limited to violations of title III of HAVA (unless expanded by the state)
- The complaint be in writing, notarized, and signed and sworn by the individual filing the complaint
- The state hold a hearing on the records requested by the complainant
- The state provide the appropriate remedy if there is a violation
- The state dismiss the complaint and publish the results of the procedures if no violation is found
- The state shall make a final determination on the complaint within 90 days of the complaint being filed unless the complainant agrees to a longer period
- If the state fails to meet the 90 day deadline, the complaint shall be resolved within 60 days by alternative dispute resolution procedures containing all materials from any previous proceedings

Section 402 lists, in broad terms, what states must do to develop these procedures. States have initiated specific implementation strategies which add the necessary detail to the statutory requirements and allow these procedures to function as intended.

### Hearings

If a complainant requests a hearing pursuant to the statute, a number of states have taken the prudent step of requiring that the hearing be recorded in some manner.

*Nevada* - State regulations state that: "The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If



a board or party obtains a transcript of the hearing, the board or party shall file a copy of the transcript as a part of the record and any other interested party may examine the copy of the transcript on the record.”

*New Mexico* - State code provides that: “(t)he (elections) bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost.”

*Kentucky* - State law requires that: “Hearings shall be tape recorded and a transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcription at their own expense.” Kentucky law also provides that “Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.” No mention is made as to the availability of the video for use by other parties.

### **Investigation**

Although few states go into great detail as to what steps should be taken in investigating a complaint outside the hearing process, the *New Mexico* Bureau of Elections describes the steps to follow in an investigation as deemed appropriate under the circumstances:

- Sending an acknowledgment letter to the complainant
- Seeking a response from the election official against whom a complaint is made
- Providing the complainant with a copy of any response received from the election official against whom a complaint is made and give the complainant an opportunity to reply
- Engaging in informal resolution with the parties through a meeting, teleconference, or other means, or
- Dismissing the complaint based on its clear failure to allege a Title III violation

### **Determination**

Once a final determination has been reached relating to a complaint, most states appear to favor an internet posting as the most cost effective and expeditions way of disseminating the results

*Kentucky* - The state requires that all final determinations be posted on the internet homepage of the State Board of Elections and be retained in the permanent archival records of the Board by attaching a copy of the determination to the minutes of the monthly meeting of the Board.

*Michigan* - State election law requires the Bureau of Elections to publish the results of its final determination on its website.

*Nevada* - Nevada law requires that the final determination be mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination; posted on the website of the Secretary of State; and made available by the Secretary of State, upon request, to any interested person.

*North Carolina* - Procedures of the State Board of Elections require that the final determination be mailed, faxed, e-mailed, or otherwise delivered to the complainant and each respondent.

## **Remedy**

State laws and procedures appear to give election authorities significant latitude when prescribing remedies for violations found through the administrative complaint process. One common element found in many state procedures is the specification that in no case shall the remedy involve the payment of money to the complainant and in no case shall the election official be subject to any type of civil penalty.

*Kentucky* - State regulations require that "the remedy awarded shall be directed at the improvement of processes and procedures governed by Title III, consistent with federal and state law. In addition, "(t)he remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system complained of into compliance with Title III."

*Michigan* - The remedy provided by the Bureau of Elections for any complaint may include, but is not limited to: "Sending a written finding of a Title III violation to the authority; requiring a written response from the election authority, detailing how it will remedy a Title III violation; additional election training for the election authority."

"A remedy shall not, under any circumstances, include a financial penalty."

*New Mexico* - "An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation; an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and

the New Mexico Election Code; and a commitment to better inform voters of their rights.”

### **Alternative Dispute Resolution**

As required by HAVA, states have also designed and implemented alternative dispute resolution procedures for those cases in which the state fails to render a determination within the statutorily mandated 90 day period after a complaint is filed.

*Kentucky* - “If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of three (3) members of the (State) board (of Elections). The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

*Michigan* - “The Legal and Regulatory Services Administration shall appoint a hearing officer to review the record. The hearing officer shall render a final determination within sixty (60) days after receiving the record.”

*Nevada* - Alternative dispute resolution procedures are initiated by the Secretary of State by, “(r)etaining an independent professionally certified person to act as the arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment.” In addition, the Secretary of State may “designate in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. If proceedings for alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel.” The arbitrator or arbitration panel may review the record compiled in connection with the complaint, including, and without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitrator or arbitration panel requests that the parties present additional briefs or memoranda.” “The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to section 11 of this regulation. This period for issuing a written resolution will not be extended.”

*North Carolina* - State law requires that “(o)n or before the 5<sup>th</sup> business day after a final Board determination is was due, the Board shall designate in writing to the complainant the name of a proposed arbitrator, knowledgeable in election matters, to resolve the complaint. Within 3 business days after the complainant

receives this proposal, the complainant shall either agree to the proposed arbitrator or counter with the name of a different proposed arbitrator, also knowledgeable in election matters. Within 3 days the Board shall indicate if the proposed arbitrator of the complainant is acceptable. If it is not, then the names of both proposed arbitrators shall be placed in a container and the arbitrator shall be determined by lot drawn by the complainant. The Board shall be responsible for any reasonable costs (not to exceed the rate of \$75 per hour) and expenses generated by the arbitrator in determining the complaint. The arbitrator may review the record compiled in connection with the complaint and any briefs or memoranda previously filed in the action, but shall not receive any additional testimony or evidence. The arbitrator must issue a written resolution within 60 days after the final Board determination was due. This 60 day period may not be extended.....Under no circumstances may the final determination of an arbitrator order action to be performed except in the complaint at hand or order a change in state law, federal law or Board policies, procedures or rules."

In addition to these very specific procedural mechanisms, states must also be concerned with several more practical aspects of implementing their administrative complaint procedures.

### **Pre-Clearance**

States covered under Section 5 of the Voting Rights Act must get the administrative complaint procedures pre-cleared by the Voting Section of the Civil Rights Division of the U.S. Department of Justice before they implement the procedures. In addition, those states and jurisdictions covered under the language minority provisions of the Voting Rights Act must make sure that all forms and materials provided for the administrative complaint process are also provided in the appropriate language of the minority group or groups. Arbitrators and any other individuals fluent in the appropriate languages should also be made available to those participating in the administrative complaint procedure hearing or alternative dispute resolution process.

### **Voter Education**

Adopting and implementing administrative complaint procedures without informing the voting public on how to use these procedures is contrary to the spirit and intent of the Help America Vote Act. States should, at a minimum, post their administrative complaint procedures and forms prominently on their website and encourage all local election administrators with a web presence to do likewise.

Other methods for making these procedures available to the public include posting the information at each polling place, each "official" voter registration site in the jurisdiction and in the office of the local election official.

*Delaware* has developed brochures describing the “who, when, how, and why” of the administrative complaint process. These brochures are sized so that they can be included with sample ballot or other election mailings to voters, or they can be used as handouts at the polling places on election day in order to ease some of the burden of providing this information from the poll workers.

### **Transmission**

If voters are given the option of filing an administrative complaint with a local election official, the state should establish a timely period for the transmission of these complaints from the local official to the state election office.

*Delaware*, for example, requires that if one of the county election departments receives a complaint, the county must forward it to the state Commissioner of Elections on the same business day that it is received.

### **Tracking**

In order to meet the specific deadlines for responding to and making a determination on an administrative complaint, states should establish a tracking procedure to handle all complaints. *Delaware* is currently in the process of developing an internet based tracking system in which all complaints will be assigned a unique identifier number. The status of each complaint can then be tracked by the complainant via a secure login on the state website using the assigned number.

### **State Experiences Using the Administrative Complaint Procedure**

Two states report having experience responding to administrative complaints as of the date of this report.

Maryland had two administrative complaints filed after their March 2, 2004 Primary Election. Both Maryland complaints dealt with whether the voters' provisional ballots should have been counted by the local board of canvassers. Both complaints requested a hearing on the record and final determinations can be accessed on the State Board of Elections' website at:

[http://www.elections.state.md.us/pdf/hearing\\_liss.pdf](http://www.elections.state.md.us/pdf/hearing_liss.pdf)

and

<http://www.elections.state.md.us/citizens/hava/Kolbe Howard Co final determination.pdf>

The State Board of Election stated that the hearings for these two complaints lasted over two hours and required significant amounts of staff time in preparation for the hearing and in drafting the final determination. These two initial complaints have led the State Board to conclude that the procedures have the potential to be administratively difficult if a high volume of complaints are filed as a result of a particularly large voter turnout in a high profile election.

The Colorado Secretary of State received an administrative complaint as a result of the November 2003 general election in Garfield County. The complaint questioned whether all ballots in the jurisdiction were counted in accordance with HAVA and state law, whether first time voters who registered by mail showed or submitted the proper ID, and whether the county central count optical scan tabulator was functioning properly.

The report and final determination from the Colorado complaints can be accessed at: <http://www.sos.state.co.us/pubs/hava/garfield.pdf>

As was the case in Maryland, the Colorado Secretary of State's office found that these procedures took significant amounts of staff time, particularly when drafting the final 248 page Garfield County report. Colorado intends to try and keep potentially costly and time consuming administrative complaints to a minimum by conducting thorough training and education programs for both election officials and the general public.

Links to examples of State administrative complaint forms and procedures can be accessed at:

**California** = <http://www.ss.ca.gov/elections/hava-complaint-procedure.htm>

**Colorado** = [http://www.sos.state.co.us/pubs/hava/hava\\_complaint\\_1.pdf](http://www.sos.state.co.us/pubs/hava/hava_complaint_1.pdf)

**Delaware** = <http://www.state.de.us/election/publications/Complaints%20-%20PDF.pdf>

**Kentucky** = <http://www.lrc.state.ky.us/kar/031/006/010.htm>

**Maryland** =  
Administrative Complaint Procedures:  
[http://www.elections.state.md.us/pdf/HAVA\\_Administrative\\_Complaint\\_Form\\_Instructions.pdf](http://www.elections.state.md.us/pdf/HAVA_Administrative_Complaint_Form_Instructions.pdf)

Complaint Form:  
[http://www.elections.state.md.us/pdf/HAVA\\_Administrative\\_Complaint\\_Form.pdf](http://www.elections.state.md.us/pdf/HAVA_Administrative_Complaint_Form.pdf)

**New Hampshire** =  
Administrative Complaint Procedures:  
<http://www.doj.nh.gov/elections/32313.html>

Complaint Form: [http://www.doj.nh.gov/elections/complaint\\_form.pdf](http://www.doj.nh.gov/elections/complaint_form.pdf)

**New Mexico** =  
Administrative Complaint Procedures:  
<http://www.sos.state.nm.us/Election/ComplaintRule.pdf>

Complaint Form: <http://www.sos.state.nm.us/Election/AdminComplaintForm.pdf>

**Oregon** = <http://www.sos.state.or.us/elections/violations/oar165-001-0090.html>

**South Carolina** =

Administrative

Complaint

Procedures:

[http://www.state.sc.us/scsec/t3comp\\_form.htm](http://www.state.sc.us/scsec/t3comp_form.htm)

Complaint Form: [http://www.state.sc.us/scsec/Title3 Complaint Form.pdf](http://www.state.sc.us/scsec/Title3_Complaint_Form.pdf)

**Wyoming** = <http://soswy.state.wy.us/election/hava/complain.pdf>

**DRAFT**

Dear Voter,

**CONGRATULATIONS!!!** You are now a registered voter in San Juan County, New Mexico.

Enclosed is your Voter Information Card. Please look it over carefully to make sure all the information is accurate. If it is not, please contact our office immediately so corrections can be made.

The information card shows your polling place. If you determine that you do not want to travel the distance to that polling place on election day, you can vote on a paper ballot in your home or go to an early voting site before election day. If you would like additional information about these methods of voting, please call our office.

The polling place listed is the one that is established for the precinct in which you live. It is your designated polling place for State and Federal elections. When cities, school districts, the college and the county have elections they often will combine precincts to cut down on the cost of elections. When this happens, your polling place may be different from the one listed on your information card. *Please do not be confused when this happens.* Look at the information provided about the election, find your precinct number and you will be at the correct polling place.

If our voter information card indicates that your party is DTS (Declined To State), it means that you have not chosen a party and will NOT be able to vote in the June primary election of even numbered years. You will, however, be able to vote in any other election.

Please be advised that a newly enacted Federal Law "Help America Vote Act" or "HAVA" requires that first-time registrants in our county, who register by mail, must provide a copy of their identification before voting.

As a new voter, who registered by mail, you must provide identification at the time you register to vote, prior to Election Day or at your polling place on Election Day.

The following forms of identification are acceptable:

1. Current and valid photo identification.
2. A current utility bill.
3. A current bank statement.
4. A current government check, or
5. Any other government document that shows your name and address.

Enclosed for your convenience is a postage paid, return envelope for you to send a copy of your identification to our office. If you have any questions regarding your voter registration, upcoming elections or any other function of the County Clerk's office, please feel free to call or come by our office. It is located at 100 South Oliver in Aztec. Our office hours are 7 AM to 5:30 PM Monday through Friday.

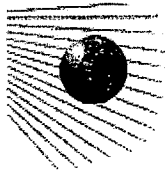


As your County Clerk, I would like to encourage you to vote in all elections. Your vote **DOES** count and is important.

Sincerely,

Fran J. Hanhardt  
San Juan County Clerk

**DRAFT**



Paul DeGregorio /EAC/GOV  
09/01/2004 07:12 PM

To Gracia Hillman/EAC/GOV, Raymundo Martinez/EAC/GOV,  
Diane Savoy/EAC/GOV, DeForest Soaries Jr./EAC/GOV  
cc jsmith@impactstrategiesllc.com  
bcc Adam Ambrogi/EAC/GOV; Daniel Murphy/EAC/GOV  
Subject Best Practices ToolKit II

Attached is the 2nd draft of the Best Practice II document that Brian Hancock developed. Gracia asked me to review the first draft and what you see is the result of some recommendations I (and Dan Murphy) made. The document focuses on the key areas of Voter ID, Polling Place Signage and State Administrative Complaint Procedures. While I realize we may be approaching a time when election officials can't make any more changes for this election, it still is probably worth getting this information distributed. There are samples of ID's, signage and the State's complaint procedures with the document. It is hoped that by mid-October we can post on our website information on each State's complaint procedure and how a voter can file a complaint in their state. It could be a drop-down list like our "be a pollworker" site.

Diane has received a cost estimate of \$3600 from our web folks to have this posted on our web site.

If we are ready to move on this (and can afford the \$3600), the next step is to have Gracia run it by our Standards/Advisory Boards for comment. I assume that process can occur from Sept. 3-10 and we can get this on our web site by mid-September.

We can discuss on Thursday.



PSD Best Practices II document 2nd draft.doc

026212

## HAVA Best Practices Tool Kit:

### Voter Identification, Polling Place Signage and State Administrative Complaint Procedures

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## Voter Identification

Section 303(b) of the Help America Vote Act requires most individuals who register by mail and who have not previously voted in an election for Federal office in the state or who have not previously voted in such an election in the jurisdiction if the State is without a HAVA compliant statewide voter registration database, to present certain identification (ID) documents. Under this section, a voter may show either a current and valid photo identification to the appropriate election official when voting in person 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. If voting by mail, a copy of these documents must be submitted with the ballot.

Although state ID requirements vary somewhat, the 5 most common forms of photo identification required by states are:

1. a valid and current driver's license
2. a valid and current state ID card
3. a valid U.S. Passport
4. a valid and current Federal agency official ID card
5. a valid student ID card

In addition, the 5 most common forms of non-photo ID required by states are:

1. a current utility bill with name and address
2. a current bank statement with name and address
3. a current paycheck with name and address
4. a Social Security Card
5. a valid voter registration card or certificate

States have also found a number of distinctive forms of identification which voters may show to meet the requirements of this section of HAVA. Ten (10) unique forms of ID documentation allowed by states are:

1. a valid tribal government ID card
2. a valid state license to carry a pistol or revolver
3. a valid pilot's license
4. a certified copy of the elector's birth certificate
5. a health club ID card
6. a public transportation authority senior citizen's discount card issued by a government agency

7. a drug prescription issued by a government doctor or other government health care provider
8. a buyer's club ID card
9. a neighborhood association ID card
10. a retirement center ID card

## **State Approaches**

Some states have found other alternative methods of verifying a voter's identity. The state of Montana implemented their Voter Verification Service in the recent June 2004 Primary Election. Those individuals who arrived to vote without having the proper identification documentation were asked to fill out a form containing their last name, address, date of birth, driver's license number or the last 4 digits of their social security number. The election judge then calls the local election office which is able to access the State driver's services program via the internet to search the state drivers' database in order to find a match. State officials noted that over 600 individuals were able to vote a regular ballot after being verified by the system, and very few provisional ballots were required. For more information on this program, contact the Montana Election Bureau by phone at 406-444-4732, or via email at [seselection@state.mt.us](mailto:seselection@state.mt.us).

Many states report that they have not yet had enough experience implementing the voter ID provisions of HAVA to cite specific lessons learned. For those states that have had experience implementing these provisions, many of those who report no significant problems attribute their success to a proactive approach to collecting the required voter identification documentation. In New Mexico, individuals who fail to submit the proper ID documentation when they registered by mail are sent a letter reminding them of the required documentation and including a postage paid return envelope to enable the registrant to easily forward the required identification document prior to election day. A sample letter from San Juan County, New Mexico is included as *Attachment A* at the end of this report.

Maryland has also taken a proactive approach to collecting ID documentation by sending at least two letters about the new requirements to voters before the March 2004 Primary Election. The State Board of Elections also issued a press release and did some media outreach to inform the public of the new requirements.

Other states having experience implementing the voter ID requirements in recent state primary elections have observed some inconsistencies among their counties in the handling of voter ID documentation and with some poll workers asking all voters for ID documentation before voting. These states acknowledge that these types of issues can and will be addressed through more rigorous

training for poll workers and through better communications between the state election office and the local election offices.

## Polling Place Signage

Section 302(b) of the Help America Vote Act requires the appropriate State or local election official to publicly post specific voting information at each polling place on the day of each Federal election. For this section of HAVA, the term "voting information" means:

- A sample version of the ballot that will be used for that election;
- information regarding the date of the election and the hours during which polling places will be open
- Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- Instructions for mail-in registrants and first-time voters under section 303(b);
- General information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights have been violated; and
- General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

Most states have implemented these provisions through the production of posters or wall hangings ranging in size from 8 1/2" x 11" to as large as 3' x 4'. Several states are quite specific not only in describing which documents must be posted at the polling place, but also how many of each document must be posted. Arizona, for example requires that the following informational items are posted at each polling place:

- Two sample ballots
- Two cards of instruction
- Names of and write-in candidates
- Three 75 foot limit signs
- Voter parking /polling place sign
- Four "Vote Here" signs
- Three "Instructions for Voter" signs
- Five instructions to voters and election officials signs regarding the right to vote a provisional ballot

In most states, the office of the chief state election official produces the informational materials required under HAVA, while the local election officials

ensure that these materials are posted at all polling places in their jurisdictions. Sample ballot information, unlike most of the other required postings, changes from election to election and generally requires local election officials to both produce and post this election specific information.

Readability experts as well as most election officials agree that it is not enough to simply post information on the walls of a polling place and hope the voters are able to read and understand the important messages that these materials convey. In order for voters to effectively utilize the posted information, the materials must be designed with readability and usability in mind, and posted in a visible location that can be found easily by the voters.

The following general principals of good design and readability contribute significantly in getting the intended message read and understood by the voting public.

### **Document Layout**

- Avoid producing a “sea of text.” A long uninterrupted page of text can be overwhelming for marginal readers and tiring for all readers.
- Break up the text with white space, headings and subheadings, space between paragraphs, bullets and numbering.
- Include wide margins at each side of your text to give the readers eye some “breathing room.”
- Avoid straight (“justified”) margins on both sides. With justified text every line is the same length and so they all look alike. “Ragged right” margins make it easier for readers to keep their place, and pace.

### **Type Styles**

- Long stretches of *italic type* or of **boldface type** or of underlined type are harder to read than normal type. These are good treatments for words or phrases you want to emphasize, but don’t use either one too often or they become very distracting.

- Sentences that are written all in CAPITAL LETTERS are hard to read even for good readers because every capital letter has nearly the same height and shape.
- Use dark ink. Some readers may have trouble reading text that is screened or in light ink. Long lines of “reversed” type (white type on a black background) can also be hard on the eyes, and therefore difficult for persons who are not strong readers.

## Readability

- Use shorter words. When possible, use fewer syllables. To marginal readers, there is a big difference between a two-syllable word and a four or five syllable word. For example, use *help* instead of *assistance*; use *copy* instead of *duplicate*; use *question* instead of *inquiry*.
- Use a word (or two) instead of a phrase. This practice is easier on all readers. For example, use *about* instead of *with regard to*; use *if* instead of *in the event that*; use *under* instead of *in accordance with*.
- Keep sentences short. As a rule of thumb, fewer than ten words is ideal, up to fifteen words is more realistic, more than twenty words is too long. One way to keep sentences short is to avoid needless words.
- Keep paragraphs to six or fewer sentences. In many instances, it is better to avoid formal paragraphs and instead turn text to a list of items with *bullets*, *1-2-3*, or *a-b-c* order.
- Write in the active voice. Make the subject of your sentence do the action. For example, “*The application must be signed by the voter.*” is in the passive voice, while “*You must sign the application.*” is in the active voice. The active voice is shorter, more personal and more readable.

Additional information on how to improve the readability and usability of election forms and signage is available in *Innovations in Election Administration 13: Simplifying Election Forms and Materials*. This document was originally published by the Federal Election Commission in 1996, and is now available from the U.S. Election Assistance Commission by calling 1-866-747-1471.



Another resource for election officials seeking to improve the effectiveness of their polling place signage and election materials is the American Institute of Graphic Arts (AIGA). Through their initiative called Design for Democracy, AIGA has created a nonprofit organization dedicated to improving the quality, legibility and effectiveness of election materials. The design for Democracy team has worked extensively with election officials in Cook County, Illinois and with the state of Oregon to develop prototypes for improved ballot design, polling place signage, poll worker training and recruitment material, provisional voting documents and voter education materials. For information on how to contact an AIGA Chapter in your area, use the interactive map on the AIGA web site at: <http://www.aiga.org/content.cfm/chaptermap>

A link to AIGA page on designing effective polling place signage can be accessed at: [http://electiondesign.org/pdf/d4d\\_polling\\_place\\_signage.pdf](http://electiondesign.org/pdf/d4d_polling_place_signage.pdf)

Several other steps are also worth considering when developing polling place signage.

- Any signs or similar materials produced in English must also be produced in the language of a qualified language minority group if the jurisdiction is covered by the bilingual election requirements of the Voting Rights Act. (42 U.S.C. 1973aa – 1a & 1973b (f) (4)). Additional information on the language minority provisions can be accessed on the web site of the Civil Rights Division of the U.S. Department of Justice at: [http://www.usdoj.gov/crt/voting/sec\\_203/activ\\_203.htm](http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm)
- North Dakota notes that the posters they produce are also available in Braille to assist some blind voters, and some are available in an audio version through the State Library's Radio Reading Service.
- Washington State has also produced a video to supplement the information provided on poster size polling place signage. Each county has its own video filmed within that county explaining how to cast a ballot on the particular type of voting system used within that jurisdiction, and taking the voter through the entire voting process. These videos can also be accessed on the Washington Secretary of State's website at: [http://www.secstate.wa.gov/elections/voting\\_video.aspx](http://www.secstate.wa.gov/elections/voting_video.aspx)

## **Examples of Polling Place Signage**

Links to examples of HAVA required polling place signage can be accessed at:

**Indiana** = <http://www.state.in.us/sos/whatsnew/ivbr.pdf>

**Kansas** = [http://www.kssos.org/forms/elections/voter\\_rights.pdf](http://www.kssos.org/forms/elections/voter_rights.pdf)

[http://www.kssos.org/forms/elections/poster\\_spanish.pdf](http://www.kssos.org/forms/elections/poster_spanish.pdf)  
(Spanish version)

**Montana** = <http://sos.state.mt.us/Assets/elections/VoterBroR4.pdf>

**Minnesota** = <http://www.sos.state.mn.us/election/PollingPlacePosters.pdf>

**North Dakota** = <http://www.state.nd.us/hava/education/doc/voters-rights.pdf>

**Texas** = <http://www.sos.state.tx.us/elections/forms/2003voterposter.pdf>

**Vermont** = [http://vermont-elections.org/elections1/voter\\_rights.pdf](http://vermont-elections.org/elections1/voter_rights.pdf)

## **Administrative Complaint Procedures**

Section 402 of the Help America Vote Act requires the establishment of specific State-based administrative complaint procedures to remedy grievances.

HAVA requires that:

- The procedures are uniform and non-discriminatory
- The procedures are limited to violations of title III of HAVA (unless expanded by the state)
- The complaint be in writing, notarized and signed and sworn by the individual filing the complaint
- The state hold a hearing on the record if requested by the complainant
- The state provide the appropriate remedy if there is a violation

- The state dismiss the complaint and publish the results of the procedures if no violation is found
- The state shall make a final determination on the complaint within 90 days of the complaint being filed unless the complainant agrees to a longer period
- If the state fails to meet the 90 day deadline, the complaint shall be resolved within 60 days by alternative dispute resolution procedures containing all materials from any previous proceedings

Section 402 lists, in broad terms, what states must do to develop these procedures. States have initiated specific implementation strategies which add the necessary detail to the statutory requirements and allow these procedures to function as intended.

## **Hearings**

If a complainant requests a hearing pursuant to the statute, a number of states have taken the prudent step of requiring that the hearing be recorded in some manner.

**Nevada** - Regulations state that: "The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of the hearing, the board or party shall file a copy of the transcript as a part of the record and any other interested party may examine the copy of the transcript on the record."

**New Mexico** - State code provides that: "[t]he (elections) bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost."

**Kentucky** - State law requires that: "Hearings shall be tape recorded and a transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcription at their own expense." Kentucky law also provides that "Hearings may be held and testimony taken by teleconference or video conference with notice to the parties." No mention is made as to the availability of the video for use by other parties.

## ***Investigation***

Although few states go into great detail as to what steps should be taken in investigating a complaint outside the hearing process, the *New Mexico* Bureau of Elections describes the steps to follow in an investigation as deemed appropriate under the circumstances:

- Sending an acknowledgement letter to the complainant
- Seeking a response from the election official against whom a complaint is made
- Providing the complainant with a copy of any response received from the election official against whom a complaint is made and give the complainant an opportunity to reply
- Engaging in informal resolution with the parties through a meeting, teleconference, or other means, or
- Dismissing the complaint based on its clear failure to allege a Title 11 violation

## ***Determination***

Once a final determination has been reached relating to a complaint, most states appear to favor an internet posting as the most cost effective and expeditious way of disseminating the results.

***Kentucky*** - The state requires that all final determinations be posted on the internet homepage of the State Board of Elections and be retained in the permanent archival records of the Board by attaching a copy of the determination to the minutes of the monthly meeting of the Board.

***Michigan*** - State election law requires that the Bureau of Elections to publish the results of its final determination on its website.

***Nevada*** - Nevada law requires that the final determination be mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination; posted on the website of the Secretary of State; and made available by the Secretary of State, upon request, to any interested person.

**North Carolina** - Procedures of the State Board of Elections require that the final determination be mailed, faxed, e-mailed, or otherwise delivered to the complainant and each respondent.

## **Remedy**

State laws and procedures appear to give election authorities significant latitude when prescribing remedies for violations found through the administrative complaint process. One common element found in many state procedures is the specification that in no case shall the remedy involve the payment of money to the complainant and in no case shall the election official be subject to any type of civil penalty.

**Kentucky** - State regulations require that "the remedy awarded shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law." In addition, "[t]he remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system complained of into compliance with Title III."

**Michigan** - The remedy provided by the Bureau of Elections for any complaint may include, but is not limited to: "Sending a written finding of a Title III violation to the authority; requiring a written response from the election authority, detailing how it will remedy a Title III violation; additional election training for the election authority."

"A remedy shall not, under any circumstances, include a financial penalty."

**New Mexico** - An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation; an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and the New Mexico Election Code; and a commitment to better inform voters of their rights."

## **Alternative Dispute Resolution**

As required by HAVA, states have also designed and implemented alternative dispute resolution procedures for those cases in which the state fails to render a determination within the statutorily mandated 90 day period after a complaint is filed.

**Kentucky** - "If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of

three (3) members of the (State) board (of Elections). The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

**Michigan** - "The Legal and Regulatory Services Administration shall appoint a hearing officer to review the record. The hearing officer shall render a final determination within sixty (60) days after receiving the record."

**Nevada** - Alternative dispute resolution procedures are initiated by the Secretary of State by, "[r]etaining an independent professionally qualified person to act as the arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment." In addition, the Secretary of State may "designate in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. If proceedings of alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel." The arbitrator or arbitration panel may review the record compiled in connection with the complaint, including and without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitrator or arbitration panel requests that the parties present additional briefs or memoranda." "The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to section 11 of this regulation. This period for issuing a written resolution will not be extended."

**North Carolina** - State law requires that "[o]n or before the 5<sup>th</sup> business day after a final Board determination is due, the Board shall designate in writing to the complainant the name of a proposed arbitrator, knowledgeable in election matters, to resolve the complaint. Within 3 business days after the complainant receives this proposal, the complainant shall either agree to the proposed arbitrator or counter with the name of a different proposed arbitrator, also knowledgeable in election matters. Within 3 days the Board shall indicate if the proposed arbitrator of the complainant is acceptable. If it is not, then the names of both proposed arbitrators shall be placed in a container and the arbitrator shall be determined by lot drawn by the complainant. The Board shall be responsible for any reasonable costs (not to exceed the rate of \$75 per hour) and expenses generated by the arbitrator in determining the complaint. The arbitrator may review the record compiled in connection with the complaint and any briefs or memoranda previously filed in the action, but shall not receive any additional testimony or evidence. The arbitrator must issue a written resolution within 60 days after the final Board determination was due. This 60 day period may not be extended.....Under no circumstances may the final determination of an arbitrator

order action to be performed except in the complaint at hand or order a change in state law, federal law or Board policies, procedures or rules.”

In addition to these very specific procedural mechanisms, states must also be concerned with several more practical aspects of implementing their administrative complaint procedures.

### ***Pre-Clearance***

States covered under Section 5 of the Voting Rights Act must get the administrative complaint procedures pre-cleared by the Voting Section of the Civil Rights Division of the U.S. Department of Justice before they implement the procedures. In addition, those states and jurisdictions covered under the language minority provisions of the Voting Rights Act must make sure that all forms and materials provided for the administrative complaint process are also provided in the appropriate language of the minority group or groups. Arbitrators and any other individuals fluent in the appropriate languages should also be made available to those participating in the administrative complaint procedure hearing or alternative dispute resolution process.

### ***Voter Education***

Adopting and implementing administrative complaint procedures without informing the voting public on how to use these procedures is contrary to the spirit and intent of the Help America Vote Act. States should, at a minimum, post their administrative complaint procedures and forms prominently on their website and encourage local election administrators with a web presence to do likewise.

Other methods for making these procedures available to the public include posting the information at each polling place, each “official” voter registration site in the jurisdiction and in the office of the local election official.

**Delaware** has developed brochures describing the “who, when, how, and why” of the administrative complaint process. These brochures are sized so that they can be included with sample ballot or other election mailings to voters, or they can be used as handouts at the polling places on election day in order to ease some of the burden of providing this information from the poll workers.

## ***Transmission***

If voters are given the option of filing an administrative complaint with a local election official, the state should establish a timely period for the transmission of these complaints from the local official to the state election office.

**Delaware**, for example, requires that if one of the county election departments receives a complaint, the county must forward it to the state Commissioner of Elections on the same business day that it is received.

## ***Tracking***

In order to meet the specific deadlines for responding to and making a determination on an administrative complaint, states should establish a tracking procedure to handle all complaints. **Delaware** is currently in the process of developing an internet based tracking system in which all complaints will be assigned a unique identifier number. The status of each complaint can then be tracked by the complainant via a secure login on the state website using the assigned number.

## ***State Experiences Using the Administrative Complaint Procedure***

Two states report having experience responding to administrative complaints as of the date of this report.

Maryland had two administrative complaints filed after their March 2, 2004 Primary Election. Both Maryland complaints dealt with whether the voters' provisional ballots should have been counted by the local board of canvassers. Both complaints requested a hearing on the record and final determinations can be accessed on the State Board of Elections' website at:

[http://www.elections.state.md.us/pdf/hearing\\_liss.pdf](http://www.elections.state.md.us/pdf/hearing_liss.pdf)

and

<http://www.elections.state.md.us/citizens/hava/Kolbe Howard Co final determination.pdf>

The State Board of Election stated that the hearings for these two complaints lasted over two hours and required significant amounts of staff time in preparation for the hearing and in drafting the final determination. These two initial complaints have led the State Board to conclude that the procedures have the potential to be administratively difficult if a high volume of complaints are filed as a result of a particularly large voter turnout in a high profile election.



The Colorado Secretary of State received an administrative complaint as a result of the November 2003 general election in Garfield County. The complaint questioned whether all ballots in the jurisdiction were counted in accordance with HAVA and state law, whether first time voters who registered by mail showed or submitted the proper ID, and whether the county central count optical scan tabulator was functioning properly.

The report and final determination from the Colorado complaints can be accessed at: <http://www.sos.state.co.us/pubs/hava/garfield.pdf>

As was the case in Maryland, the Colorado Secretary of State's office found that these procedures took significant amounts of staff time, particularly when drafting the final 248 page Garfield County report. Colorado intends to try and keep potentially costly and time consuming administrative complaints to a minimum by conducting thorough training and education programs for both election officials and the general public.

### ***Examples of Administrative Complaint Forms and Procedures***

Links to examples of State administrative complaint forms and procedures can be accessed at:

**California** = <http://www.ss.ca.gov/elections/hava-complaint-procedure.htm>

**Colorado** = [http://www.sos.state.co.us/pubs/hava/hava\\_complaint\\_1.pdf](http://www.sos.state.co.us/pubs/hava/hava_complaint_1.pdf)

**Delaware** = <http://www.state.de.us/election/publications/Complaints%20-%20PDF.pdf>

**Maryland** =  
Administrative Complaint Procedures:  
[http://www.elections.state.md.us/pdf/HAVA\\_Administrative\\_Complaint\\_Form\\_Instructions.pdf](http://www.elections.state.md.us/pdf/HAVA_Administrative_Complaint_Form_Instructions.pdf)

Complaint Form:  
[http://www.elections.state.md.us/pdf/HAVA\\_Administrative\\_Complaint\\_Form.pdf](http://www.elections.state.md.us/pdf/HAVA_Administrative_Complaint_Form.pdf)

**New Hampshire** =  
Administrative Complaint Procedures:  
<http://www.doj.nh.gov/elections/32313.html>

Complaint Form: [http://www.doj.nh.gov/elections/complaint\\_form.pdf](http://www.doj.nh.gov/elections/complaint_form.pdf)

**New Mexico =**

Administrative Complaint Procedures:

<http://www.sos.state.nm.us/Election/ComplaintRule.pdf>

Complaint Form: <http://www.sos.state.nm.us/Election/AdminComplaintForm.pdf>

**Oregon =** <http://www.sos.state.or.us/elections/violations/oar165-001-0090.html>

**South Carolina =**

Administrative Complaint Procedures:

[http://www.state.sc.us/scsec/t3comp\\_form.htm](http://www.state.sc.us/scsec/t3comp_form.htm)

Complaint Form: [http://www.state.sc.us/scsec/Title3\\_Complaint\\_Form.pdf](http://www.state.sc.us/scsec/Title3_Complaint_Form.pdf)

**Virginia =** <http://www.sbe.state.va.us/hava/ElectionDay-Complaint-Form.pdf>

**Wyoming =** <http://soswy.state.wy.us/election/hava/complain.pdf>

**For specific information on filing an administrative complaint in your state, you may contact your chief state election official via the link below.**

[http://eac.gov/list\\_states.asp?format=none](http://eac.gov/list_states.asp?format=none)

DRAFT

## Attachment A

Dear Voter,

**CONGRATULATIONS!!!** You are now a registered voter in San Juan County, New Mexico.

Enclosed is your Voter Information Card. Please look it over carefully to make sure all the information is accurate. If it is not, please contact our office immediately so corrections can be made.

The information card shows your polling place. If you determine that you do not want to travel the distance to that polling place on election day, you can vote on a paper ballot in your home or go to an early voting site before election day. If you would like additional information about these methods of voting, please call our office.

The polling place listed is the one that is assigned for the precinct in which you live. It is your designated polling place for State and Federal elections. When cities, school districts, the college and the county have elections they often will combine precincts to cut down on the cost of elections. When this happens, your polling place may be different from the one listed on your information card. *Please do not be confused when this happens.* Look at the information provided about the election, find your precinct number and you will be at the correct polling place.

If our voter information card indicates that your party is DTS (Declined To State), it means that you have not chosen a party and will **NOT** be able to vote in the June primary election of even numbered years. You will, however, be able to vote in any other election.

Please be advised that a newly enacted Federal Law "Help America Vote Act" or "HAVA" requires that first time registrants in our county, who register by mail, must provide a copy of their identification before voting.

As a new voter, who registered by mail, you must provide identification at the time you register to vote, prior to Election Day at your polling place on Election Day.

The following forms of identification are acceptable:

1. Current and valid photo identification.
2. A current utility bill.
3. A current bank statement.
4. A current government check, or
5. Any other government document that shows your name and address.

Enclosed for your convenience is a postage paid, return envelope for you to send a copy of your identification to our office. If you have any questions regarding your voter registration, upcoming elections or any other function of the County Clerk's office, please feel free to call or come by our

office. It is located at 100 South Oliver in Aztec. Our office hours are 7 AM to 5:30 PM Monday through Friday.

As your County Clerk I would like to encourage you to vote in all elections. Your vote **DOES** count and is important.

Sincerely,

Fran J. Hanhardt  
San Juan County Clerk

**DRAFT**

Carol A. Paquette/EAC/GOV

10/28/2004 07:36 PM

To DeForest Soaries Jr./EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Paul Adam Ambrogi/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Nancy Jackson/EAC/GOV@EAC, Daniel Murphy/EAC/GOV@EAC, Kay

bcc

Subject preparing for post-election issues

In a recent conversation with the Chair, he stated a requirement for the EAC to be prepared for a possible scenario where there is no concession by Thursday (11/4). We also touched on this topic briefly in a Commissioners discussion meeting. His view of the EAC role in this circumstance is to be a narrator - to keep people informed and explain (without interpreting or interjecting ourselves) what's going on (law suits, recounts, etc.). He drew the analogy to Rudy Guiliano's role after 9/11. EAC can be a source of impartial information without slanting or interjecting ourselves into situations. He also referred to using a "teach-in" approach. THE PURPOSE OF THIS EMAIL is to collect your lists of potential issues that we may need to address. Some obvious ones are provisional balloting, voter ID requirements, voter registration/voter fraud, absentee balloting, military balloting, electoral college, election processes dealing with tabulation and its aftermath, court cases. Please provide any additional topics. Kay will oversee the collection of basic materials on these topics, so we can prepare in advance to respond quickly if there is a need or desire for an EAC statement, comments from the Commissioners, press interviews, etc. Thanks!

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026231



"Doug Lewis"  
[redacted]  
r.com>

11/06/2004 08:16 PM

Please respond to  
[redacted]

To "Ray Martinez" <rmartinez@eac.gov>, "Deforest Soaries" <dbsoaries@eac.gov>, "Gracia Hilman" <ghillman@eac.gov>, "Paul Degregorio" <[redacted]>, "Rebecca Vigil-Giron" <[redacted]>, "Thomas Wilkey" <[redacted]>, "Alice Miller (E-mail)" <[redacted]>, "Donetta Davidson" <[redacted]>

bcc

Subject Elections Reform Task Force

History: This message has been forwarded

Commissioners:

This is a Heads UP notice: The Election Center is calling its National Task Force on Election Reform (which we utilized to review Election 2000) back into existence. Even though this election went exceedingly well from a public perception, we noticed many areas that need the attention of state and local election officials and especially state legislatures. To keep this brief, I won't go into great detail now (I will send you a more detailed outline in a few weeks) but we saw enough problems in Voter Registration, Absentee Balloting, Provisional Balloting, voter ID, Poll Watchers, early voting issues and even some problems with voting systems, to warrant coming back together. We will publish a set of recommendations as to what election officials think needs to be fixed and why and even at what level of government.

That Task Force is very likely to meet on January 4 and 5 in Washington, DC, at the Westin Embassy Row. You are welcome to sit in on any and all discussions of the Task Force. On January 6 and 7 at the same hotel, the Joint Election Officials Liaison Committee, which is comprised of the six national elections organizations, will meet. You are also welcome for the two days of meetings that will encompass known legislative initiatives of the House and Senate, along with a review of how Election 2004 went in their states.

I wanted to let you know so that you don't hear it as a surprise, and we welcome your participation.

R. Doug Lewis  
Executive Director  
The Election Center, Inc.  
12543 Westella, Ste. 100  
Houston, TX 77077-3929  
Phone: [redacted]  
FAX: [redacted]  
Mobile: [redacted]  
[redacted]

Carol A. Paquette/EAC/GOV  
12/10/2004 05:56 PM

To DeForest Soaries Jr./EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Daniel Murphy/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Spring A. Taylor/EAC/GOV@EAC,  
bcc

Subject starting on the same page - NEED RESPONSE BY MONDAY

Commissioners -

Wanted to make sure we are all on the same page regarding the 5 guidance topics and the studies that we know we will be doing this year. This is the information I will recommend for your vote at the public meeting next week. Here's what I think they are, but need confirmation.

Guidance topics:

1. Voluntary voting system standards - this was voted on at last public meeting as public hearing topic
2. Voter registration, including statewide database, voter ID, related matters - this was voted on at last public meeting as public hearing topic
3. Provisional balloting - this was voted on at last public meeting as public hearing topic
4. Voting system auditability, voter verification - in notes from Commissioners' discussions, emphasized at last public meeting as a special topic under voting system standards
5. Voter education, including administrative complaint procedures, voter's rights, signage, voter ID, "civics 101" - in notes from Commissioners discussions, emphasized at last public meeting

Studies:

1. Section 244 - impact of 303(b) voter ID requirements on voters who register by mail, due July 2005
2. Section 245 - electronic (Internet) voting, due July 2004
3. Section 246 - free absentee ballot postage, due 11/2003
4. Election Day, UOCAVA and NVRA surveys
5. college and corporate poll worker programs

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026233

Carol A. Paquette/EAC/GOV  
02/14/2005 06:06 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, DeForest Soaries  
cc Juliet E. Thompson/EAC/GOV@EAC, Kay  
Stimson/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,  
bcc

Subject Commissioners Discussion Topics - Feb. 15, 2005

Commissioners -

Here is agenda for tomorrow's discussion. Briefing books will be provided in advance.

Information items

1. EAC letter to Congressman Domenici - Julie (Tab 1)
2. Senate and House Appropriations Committees Strategy - Chair & Julie
3. Public meetings and hearings - Julie (Tab 2)
  - 2/23 Columbus weather contingency plan
  - March 22 public meeting
  - April 26 public meeting/hearing
  - open mikes at public hearings

Decision items

4. NIST Software Reference Library - Commissioner Soaries & Carol (Tab 3)
5. NIST & standards work - Carol (Tab 4)
  - subject matter expert
  - other recommendations
    - collect RFPs
    - working group to develop voting system management guidelines
    - working group to develop electoral process outcome measures
    - white paper on enhanced quality control for voting system acceptance
6. Provisional voting/voter ID research approach - Carol (Tab 5)

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026234



Karen Lynn-Dyson/EAC/GOV  
02/24/2005 04:55 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, DeForest Soaries

cc

bcc

Subject Gentle reminder for feedback on SOW for Provisional Voting  
and Voter ID, and on a working group meeting on State wide  
VR databases

Commissioners-

You'll recall that I sent you two e-mails related to various projects that need to get under way, and that I need input regarding them by COB tomorrow ( Friday).

1. Carol Paquette and I need your approval of the statement of work for the provisional voter and voter ID project. You will recall that we are recommending that these two projects be combined ( for contracting purposes); the two projects are inter-related and the workplans and timelines for deliverables would be staggered for the two projects. Baring any major concerns or issues heard from the Commissioners, Carol and I will be posting the RFP for this work on Monday.

2. We also need your approval for the workplan for the Statewide VR database project. It is our hope that the new research analyst will take major responsibility for this project in early March. In the event that this is not possible, I am soliciting names of consultants who could be hired to do this work. Thus far, Tom Ferguson is the only consultant who has been recommended.

Thanks for getting back to me.

Regards

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

026235



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

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
bcc

03/15/2005 12:28 PM

Subject FW: RFP

Paul,

FYI - and how is your schedule in the next few weeks? We should get together for lunch again to compare election notes.

Hans

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

From: von Spakovsky, Hans (CRT)  
Sent: Tuesday, March 15, 2005 10:00 AM  
To: 'jthompson@eac.gov'  
Subject: RFP

Julie,

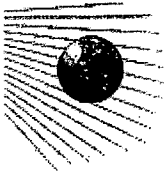
I noticed your RFP on the website yesterday for provisional voting and voter ID. I am concerned over the description of provisional voting entitlement because it may lead to confusion and increase a misunderstanding that I have already found exists in the election community. Under "Background," it states that Section 302(a) "requires that all States allow the casting of provisional ballots in instances where a voter declares his/her eligibility to vote, but his/her 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 is an incorrect summary of the law.

To be entitled to a provisional ballot in the first case, the voter must declare not only that he is eligible to vote, but also that he is registered. This is not a minor point. As you are well aware, while a voter may be eligible to vote under state law because he is over 18 and resides in the precinct where he is trying to vote, he cannot vote unless he went through the state's voter registration process. If he did not try to register, he is not entitled to a provisional ballot. This provision does not mandate election day registration but this summary could be interpreted to require that result. Congress was clearly trying to fix a problem that occurs when individuals take all of the necessary steps to register to vote, but some kind of administrative error by the state (such as DMV not forwarding the registration to election officials) prevents the voter's name from getting on the registration list. It was not meant to gut state registration requirements or to allow individuals to vote who do not bother to register.

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026236



Paul DeGregorio /EAC/GOV

03/15/2005 02:27 PM

To: "Holland Patterson (EAC)" <hpatterson@eac.gov>

cc

bcc

Subject: Fw: RFP

Holland,  
Get with Hans and see if we can do lunch next Thursday. Thanks

-----  
Sent from my BlackBerry Wireless Handheld

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

From: "Hans.von.Spakovsky@usdoj.gov" [Hans.von.Spakovsky@usdoj.gov]  
Sent: 03/15/2005 11:28 AM  
To: "'pdegregorio@eac.gov'" <pdegregorio@eac.gov>  
Subject: FW: RFP

Paul,

FYI - and how is your schedule in the next few weeks? We should get together for lunch again to compare election notes.

Hans

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

From: von Spakovsky, Hans (CRT)  
Sent: Tuesday, March 15, 2005 10:00 AM  
To: 'jthompson@eac.gov'  
Subject: RFP

Julie,

I noticed your RFP on the website yesterday for provisional voting and voter ID. I am concerned over the description of provisional voting entitlement because it may lead to confusion and increase a misunderstanding that I have already found exists in the election community. Under "Background," it states that Section 302(a) "requires that all States allow the casting of provisional ballots in instances where a voter declares his/her eligibility to vote, but his/her 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 is an incorrect summary of the law.

To be entitled to a provisional ballot in the first case, the voter must declare not only that he is eligible to vote, but also that he is registered. This is not a minor point. As you are well aware, while a voter may be eligible to vote under state law because he is over 18 and resides in the precinct where he is trying to vote, he cannot vote unless he went through the state's voter registration process. If he did not try to register, he is not entitled to a provisional ballot. This provision does not mandate election day registration but this summary could be interpreted to require that result. Congress was clearly trying to fix a problem that occurs when individuals take all of the necessary steps to register to vote, but some kind of administrative error by the state (such as DMV not forwarding the registration to election officials) prevents the voter's name from getting on the registration list. It was not meant to gut state registration requirements or

026237

to allow individuals to vote who do not bother to register.

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026238



Raymundo  
Martinez/EAC/GOV  
04/17/2005 08:47 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, DeForest Soaries  
Jr./EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, ggilmore@eac.gov  
bcc

Subject Surprise DOJ Opinion on Voter ID in AZ

Commissioners:

Attached is a letter opinion that was issued on Friday by DOJ (Office of Civil Rights) regarding the very question that was posed to me by Congressman Ed Pastor on Thursday at our budget hearing. This comes to me as a major (and unwelcomed) surprise.

This is a very serious issue. DOJ has taken the position that AZ may impose ID requirements on all voters, including those casting a provisional ballot. While the underlying rationale of the DOJ opinion is one which I vigorously disagree with, the more serious transgression, from my perspective, is that there was absolutely no coordination (or at least a "heads up") between DOJ and EAC on this matter (despite the fact that we are including DOJ in every discussion dealing with our guidance authority). Clearly something has gone awry here. My recollection is that Hans clearly stated early in our tenure that now that the EAC was up and running, we were to assume the responsibility of interpreting HAVA, while DOJ was the enforcement agency. This is the first time (other than filing the amicus brief during the provisional voting litigation back in October) where DOJ has taken it upon themselves to insert their opinion as the interpreter of HAVA, despite the presence of the EAC.

I think the procedural issue regarding this matter requires a discussion among the four of us as soon as possible. The substance of the issue will require some analysis by our counsel, but nevertheless, I believe there are serious flaws with the DOJ opinion.

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W., Suite 1100  
Washington, D.C. 20005

(202) 566-3100 (W)  
(202) 566-3127 (FAX)  
[www.eac.gov](http://www.eac.gov)

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DOJ\_Opinion\_on\_PROP200.pdf

026239



U. S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

April 15, 2005

**VIA FACSIMILE AND REGULAR MAIL**

Honorable Janice K. Brewer  
Secretary of State  
State of Arizona  
1700 West Washington Street, 7<sup>th</sup> Floor  
Phoenix, Arizona 85007-2888

Dear Secretary Brewer:

I am writing in response to your letter of April 5 to Steven G. Bradbury, Principal Deputy Assistant Attorney General in the Office of Legal Counsel, requesting a formal opinion from the Department of Justice on certain issues relating to the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15301-15545. Because the Office of Legal Counsel is not authorized to provide legal advice to persons outside the Executive Branch of the federal government, Mr. Bradbury has forwarded the request to the Civil Rights Division.

Although the Department of Justice states its formal positions with respect to the statutes it enforces only through case-by-case litigation, we do on occasion offer our general views on the manner in which we intend to enforce a particular statute or set of laws. As you know, HAVA vests the Attorney General with the responsibility of enforcing Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories. The Attorney General, in turn, has delegated those enforcement functions to the Civil Rights Division. In light of this authority, we will attempt to answer the question posed in your letter to the extent we can, although it must be emphasized that the opinions expressed here are not binding.

Your letter focuses on the requirements of HAVA Section 302(a), 42 U.S.C. 15482(a), as that section relates to provisional ballots. Specifically, you question whether, under this section, it is permissible for a state to mandate that potential voters show identification at the polls prior to receiving a provisional ballot.

Section 302(a) of HAVA requires that a provisional ballot be given to individuals (i) whose eligibility is challenged by election officials, or (ii) whose name does not appear on the

official list of eligible voters for the polling place, if the "individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office." Section 302(a) then provides a series of steps that should be taken by poll officials to transmit the ballot and voter information to election officials for "prompt verification." Whether the individual is eligible to vote, and whether the provisional ballot will be counted, are matters to be determined by state and local election officials "in accordance with State law." See HAVA Section 302(a)(4).

Two other sections of HAVA are also relevant to your question. Section 304, 42 U.S.C. 15484, specifically states that "[t]he requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict." Further, Section 305, 42 U.S.C. 15485, provides that "[t]he specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State."

Taken together, all of these provisions make it clear that the determination of an individual's eligibility to vote is left to the states, and while Title III establishes minimum standards, states may impose stricter requirements as long as those requirements are uniform and nondiscriminatory. If a state such as Arizona wishes to impose identification requirements that are stricter than HAVA, it may do so without violating the statute. This flexibility includes the right to impose stricter requirements for voter eligibility (including eligibility to receive a provisional ballot).

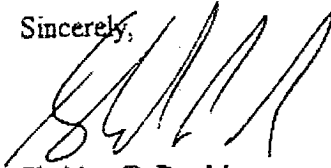
The major purpose of Section 302(a) is to allow individuals to vote who have taken all necessary steps to register to vote but whose registrations were not completed by election officials (or whose names were not added to the voter registration list) due to some administrative error. If a State requires a provisional voter, who has affirmed that he is registered and eligible to vote, to provide additional information (e.g., residence address, birth date, location where he attempted to register to vote, etc.) that may be needed for the jurisdiction to verify that the individual actually did register and is truly eligible to vote, nothing in HAVA would stand in the State's way. In other words, a State may refuse to issue a provisional ballot to an individual who refuses to provide such information.

While HAVA was passed by Congress to regulate federal elections, Sections 304 and 305 illustrate that Congress was well aware that the Constitution -- in particular, Art. I, § 4, cl. 1 -- explicitly commits the regulation of voting to the states. Indeed, a State may "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Roudebush v. Hartke*, 405 U.S. 15, 23 (1972); see also *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (States exercise "broad power to prescribe the 'Time, Places and Manner of holding Elections for Senators and Representatives,' which power is matched by state control over the election process for states offices."). In light of this broad grant of power, "state legislatures may without transgressing the Constitution impose extensive restrictions on voting." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004).

In conclusion, it is our considered judgment that neither HAVA nor any other provision of federal law preempts states from imposing identification requirements at the polls, including identification requirements for the receipt of provisional ballots. In fact, insuring the security and integrity of elections is a logical and entirely legitimate objective of state regulation of the election process, which an identification requirement naturally facilitates.

We hope that this is responsive to your questions. If you have any additional concerns, please do not hesitate to contact us.

Sincerely,



Sheldon T. Bradshaw  
Principal Deputy Assistant Attorney General



Carol A. Paquette/EAC/GOV  
04/18/2005 06:41 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, DeForest Soaries  
cc Sheila A. Banks/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Holland M.  
Patterson/EAC/GOV@EAC, Spring A.  
bcc

Subject Commissioners discussion topics - April 19

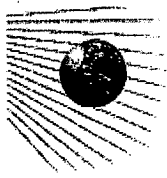
Commissioners -

There is one decision topic and three discussion topics for tomorrow.

1. DECISION - Recommendation for provisional voting contract award - Karen (Tab 1)
2. DISCUSSION - Dept of Justice opinion letter on voter ID requirements - Commissioner Martinez (Tab 2)
3. DISCUSSION - VVSG topics - Carol (Tab 3)
  - a. grandfathering of voting systems for Version 1
  - b. more NIST research to support security approach for Version 2

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026243



Paul DeGregorio /EAC/GOV

08/19/2005 11:06 AM

To Gracia Hillman, Raymundo Martinez, ddauidson@eac.gov,  
Tom Wilkey, Juliet Thompson, Karen Lynn-Dyson, Carol  
Paquette

cc

bcc Amie J. Sherrill/EAC/GOV

Subject Eagleton

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.

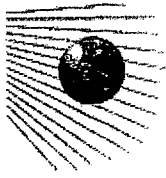
Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially 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 staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against

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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.

**Paul DeGregorio**  
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Paul DeGregorio /EAC/GOV  
09/19/2005 11:25 AM

To Karen Lynn-Dyson/EAC/GOV  
cc Thomas R. Wilkey/EAC/GOV  
bcc

Subject: Fw: INFORMATION ONLY: media clips, 9-19-05

See report below that mentions Eagleton. Is Mr Weingart working on our study? Seems like he already has his mind made up.

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Sent from my BlackBerry Wireless Handheld  
Bryan Whitener

**From:** Bryan Whitener  
**Sent:** 09/19/2005 11:10 AM  
**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez; Donetta Davidson  
**Cc:** Adam Ambrogi; Amie Sherrill; Bola Olu; Brian Hancock; Carol Paquette; daniel.murphy; DeAnna Smith; Diana Scott; Edgardo Cortes; Gavin Gilmour; Gaylin Vogel; Jeannie Layson; Joseph Hardy; Joyce Wilson; Juliet Thompson; Karen Lynn-Dyson; Margaret Sims; Nicole Mortellito; Roger Larouche; Sheila Banks; Tamar Nedzar; Thomas Wilkey; twilkey  
**Subject:** INFORMATION ONLY: media clips, 9-19-05

Commissioners:

The following items are in the news.

- Fred Lucas of the *Danbury News Times* in Connecticut provides more details on the story involving the state's reaction to EAC's advisory on lever machines. Lucas provides more details on the advisory itself as well as the role of EAC and DOJ in HAVA as follows.

"Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania....Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws....EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment."

- The *Washington Post* and the *New York Times* report on the recommendations released by the Carter-Baker Commission. Among other issues dealing with photo ID, voter identification numbers and registration, the Post mentions recommendations regarding EAC as follows.

"The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations....Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission."

Commission on Federal Election Reform: Final Commission Report: Building Confidence in U.S. Elections  
<http://www.american.edu/ia/cfer/>

- Gerald Witt of the *Danville Register and Bee* in Virginia reports on the end of lever machine voting in

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Danville, VA. The old lever machines were auctioned off on Saturday. Brian Hancock is quoted as follows.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

- James Quirk of the *Asbury Park Press* reports on fraud allegations contained in a report by the New Jersey Republican State Committee. John Weingart of Eagleton Institute of Politics questions the magnitude of the charges and EAC is mentioned as follows.

"The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls, and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory."

- The *Toledo Blade* reports on the appointment of Keith Cunningham, director of the Allen County Board of Elections in Ohio to EAC's Board of Advisors.

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## Voting machines may be history

<http://news.newstimeslive.com/story.php?id=74485&category=Local>

Federal panel finds Connecticut's lever booths inaccessible to the disabled, prone to error  
By Fred Lucas

THE NEWS-TIMES

Friday, September 16, 2005

Connecticut's voting machines are prone to error, and lack accessibility for disabled and non-English speaking voters. Because of that finding by a federal panel, the state's 3,500 lever machines could be junked before the 2006 election.

They would have to be replaced with new machines that cost between \$5,000 and \$20,000 each.

State officials are scrambling to find out the ruling by the U.S. Election Assistance Commission is binding.

Many don't want to change from the old machines, which have worked fine so far, said Danbury Republican Registrar of Voters Mary Ann Doran.

"These machines do not break down and are dependable," Doran said in defense of the lever machines. "We've had no floating chads. We've had no power outages. These work."

Connecticut is spending \$33 million in federal money to buy new electronic voting machines. The state plans to ensure each polling place in the state has one electronic machine accessible to disabled people, with a Spanish ballot available and a paper voting receipt to ensure accuracy. The 769 new voting machines are supposed to be available in time for the 2006 election.

The new mandates from the federal election panel were issued under the auspices of the 2002 federal Help America Vote Act, or HAVA, passed in light of the debacle of the 2000 presidential race, when massive malfunction of the counting process in Florida the the outcome of the George W. Bush-Al Gore

race into question for two months. The commission was established to implement rules to guarantee voting would be fair and accessible throughout the country.

"The state looks to the EAC to give us guidance in meeting HAVA and they have given us none," said Secretary of the State Susan Bysiewicz Thursday. "The \$33 million is enough to provide one machine per polling place. We don't know if it will be enough to replace the 3,500 lever machines."

Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania.

Disability advocates are ready to say good riddance to the lever voting machines, said Danbury resident Chris Kuell, vice president of the state's chapter of the National Federation of the Blind.

"They are not accessible," Kuell said. "The United States has 54 million disabled people. People who are visually impaired, are in a wheelchair, or have problems with motor skills can think and vote, but they can't operate these machines."

Kuell said he was satisfied that Connecticut is at least getting one specific machine per precinct that is accessible, but hopes for the day when every district has more than one.

"California, Nevada, Kentucky and Texas have used electronic voting machines for years," Kuell said. "More states are going to having more accessible machines. This country's government is based on accurate voting and the right to vote."

Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws.

EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment.

The EAC decision faulted lever machines for not having a permanent paper record for "audit capacity" of votes.

Also, the machines do not have a documented test to show they have an error rate of less than one in 500,000. Further, the machines are not accessible to the handicapped, and have no alternate language accessibility.

Attorney General Richard Blumenthal said the commission's opinion is only advisory and not binding on any state.

"The authority to decide whether, when, and how to enforce the statute belongs to the Department of Justice," Blumenthal said. "Regarding the central issue – what constitutes an adequate paper trail or audit capacity under the statute – we believe that the DOJ will carefully and objectively consider the Secretary of the State's position, and accept good-faith compliance with the law."

Many local officials hope Blumenthal is right.

"I would like to know how they are going to implement this," said Brookfield Republican Registrar Karen Nindorf. "Who's going to pay for all this? The federal government is good at mandating things and not funding them. This is amazing to me."

Doran, the Danbury registrar, has a problem with forcing cities and towns to have ballots in an alternate language.

"Every voter should read English," Doran said. "How can you be an intelligent voter if you cannot read

English? All the campaign literature is in English."

Under federal law, if a city or town has more than 1 percent of the population that predominantly speaks another language, it must provide a ballot in that language at each polling place. Seven municipalities in Connecticut, including Danbury, must provide ballots in Spanish.

Doran said local officials still do not know for certain what machines the federal government will and won't accept, so it would be tough to know the cost of replacing 42 voting machines.

Newtown has 25 voting machines, one for every 900 people. But with electronic machines, traffic is expected to move slower, as many voters are unfamiliar with the machines. That could mean the town would have to buy 75 machines to replace its lever machines, and that would cost about \$300,000, said Newtown First Selectman Herb Rosenthal, the president of the Connecticut Conference of Municipalities.

Rosenthal, town clerks and registrars of voters will meet with Bysiewicz at 10 a.m. Wednesday to determine how the ruling might affect towns.

"I don't see how we could comply with that now," said Newtown First Selectman Herb Rosenthal, president of the Connecticut Conference of Municipalities. "It's unclear who's going to pay for this. If the federal government tries to force this, I hope the state will try to get an injunction. We've never had a problem with voting as far as I'm concerned and now the federal government says the machines are no good."

Contact Fred Lucas

at [REDACTED]

or [REDACTED]

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## Carter-Baker Panel to Call for Voting Fixes

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/18/AR2005091801364.html>

Election Report Urges Photo IDs, Paper Trails And Impartial Oversight

By Dan Balz  
Washington Post Staff Writer  
Monday, September 19, 2005; A03

Warning that public confidence in the nation's election system is flagging, a commission headed by former president Jimmy Carter and former secretary of state James A. Baker III today will call for significant changes in how Americans vote, including photo IDs for all voters, verifiable paper trails for electronic voting machines and impartial administration of elections.

The report concludes that, despite changes required under the Help America Vote Act of 2002, far more must be done to restore integrity to an election system that suffers from sloppy management, treats voters differently not only from state to state but also within states, and that too often frustrates rather than encourages voters' efforts to participate in what is considered a basic American right.

The 2002 federal legislation grew out of the disputed election of 2000 and is not yet fully implemented. But the Carter-Baker commission said that even with some important changes in place, the 2004 election was marred by many of the same errors as the 2000 election. "Had the margin of victory for the [2004] presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated," the report states.

Disputes over the counting of provisional ballots, the accuracy of registration lists, long lines at some polling places, timely administration of absentee ballots and questions about the security of some electronic voting machines tarnished the 2004 elections.

Many complaints came in Ohio, where President Bush narrowly defeated Sen. John F. Kerry (D-Mass.) to secure his reelection victory. Although there has been no credible evidence of partisan manipulation of the election in Ohio, the criticisms there and elsewhere have renewed calls for a more uniform, trustworthy and nonpartisan election system across the country.

Commission leaders say the goal of the panel's 87 recommendations -- at an estimated cost of \$1.35 billion -- is to make participation easier while also enhancing ballot integrity, a careful balancing of the long-standing argument between Democrats and Republicans in the administration of elections.

The most controversial recommendation calls for all voters to produce a standard photo identification card before being allowed to vote. The commission proposes that, by 2010, voters be required to use either the Real ID card, which Congress this spring mandated as the driver's license of the future in all states. For about 12 percent of eligible voters who do not have a driver's license, the commission says states should provide at no cost an identification card that contains the same key information.

Critics of voter ID cards say the requirement could raise privacy issues and intimidate or discourage some Americans, particularly the elderly, the poor and minorities, from participating in elections. To alleviate those concerns, the Carter-Baker commission urges states to make it easy for non-drivers to obtain such cards and seeks measures to ensure privacy and security for all voters. The commission report states that by adopting a uniform voter ID card, minorities would be better protected from shifting identification standards at individual polling places.

Still, the proposed ID card drew sharp dissent from some commissioners, among them former Senate Democratic leader Thomas A. Daschle (S.D.). In a dissent joined by two other commissioners, Daschle likened the ID to a "modern day poll tax."

Both parties engaged in massive voter registration drives in 2004, but inaccurate voter lists produced many of the disputes on Election Day. The 2002 election reform act mandated states to oversee voter lists, but the commission said that some states are still relying too much on the counties to produce the data and called on states to take responsibility for the lists' accuracy.

The 2002 act required the use of provisional ballots for any eligible voter who shows up at a polling place but whose name is not on a registration list, but the 2004 election produced disparate standards for determining which of those ballots were counted. Alaska counted 97 percent of its provisional ballots, but Delaware counted 6 percent, according to the commission. The group recommends that states set uniform standards.

Approximately 9 million Americans move from one state to another in any given year. The commission cited news reports asserting that almost 46,000 voters from New York City were also registered in Florida. The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations.

The Florida recount in 2000 etched the image of the "hanging chad" in the minds of many Americans and spurred the shift to electronic, rather than paper, ballots. But flaws in these new computerized systems have led to doubts about their accuracy. The commission calls on Congress to require that all electronic machines include the capacity for a paper trail that voters can use to verify their vote. Beyond that, to alleviate concerns that machines can be maliciously programmed or hacked, the commission calls for new standards to verify that machines are secure.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.



The integrity of the Ohio system was challenged in part because the chief election official, Secretary of State J. Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The commission also included other recommendations that have been proposed before, including free television time for political candidates, a request that broadcast networks refrain from projecting any results until the polls have closed in the 48 contiguous states and that both parties shift to a system of four regional primaries to pick their nominees.

The Commission on Federal Election Reform was created under the auspices of American University's Center for Democracy and Election Management. The group was funded by several foundations, and Robert A. Pastor of American University served as executive director. Its membership included Republicans, Democrats and independents.

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## Bipartisan commission proposes election reforms

<http://www.contracostatimes.com/mld/cctimes/news/12684624.htm>

Posted on Mon, Sep. 19, 2005

By David E. Rosenbaum

NEW YORK TIMES

WASHINGTON - A private commission led by former President Jimmy Carter and former Secretary of State James Baker is proposing new steps to strengthen state election procedures and recommending that Congress require the political parties to hold four regional presidential primaries in election years rather than allowing states to hold primaries whenever they wish.

The bipartisan panel, called the Commission on Federal Election Reform, said it was responding to flaws in the system exposed by the elections of 2000 and 2004.

"We should have an electoral system where registering to vote is convenient, voting is efficient and pleasant, voting machines work properly, fraud is deterred and disputes are handled fairly and expeditiously," the commission declared.

Carter and Baker, a top official under presidents Ronald Reagan and George H.W. Bush, plan to deliver the report today to President Bush and congressional leaders.

It went to news organizations last week with the understanding that the material would not be published until today.

"The American people are losing confidence in the system, and they want electoral reform," Carter said in a statement.

These are the main recommendations:

- States, not local jurisdictions, should be in charge of voter registration, and registration lists in different states should be interconnected so voters could be purged automatically from the rolls in one state when they registered in another.
- Voters should be required to present photo ID cards at the polls, and states should provide free cards to voters without driver's licenses.
- States should make registration and voting more convenient with such innovations as mobile registration vans and voting by mail and on the Internet.

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- Electronic voting machines should make paper copies for auditing.
- In presidential election years, after the Iowa caucuses and New Hampshire primaries, the other states should hold regional primaries and caucuses at monthly intervals in March, April, May and June, with the order rotated.

The recommendations sought to strike a balance between the parties' priorities. Republicans worry about voter fraud and favor photo IDs. Democrats support easier registration and ballot access.

In the aftermath of the debacle in Florida in 2000, which put the outcome of the presidential election in doubt for more than a month, a public commission headed by Carter and former President Gerald Ford recommended an overhaul of the nation's election system.

Many of the commission's proposals, including provisional ballots for those whose eligibility was challenged, became part of the Help America Vote Act, which Congress approved and Bush signed in 2002.

But the 2004 election exposed more flaws.

Some election offices did not properly process registration applications or mail absentee ballots on time. There were reports of voter intimidation and complaints that registration lists had been improperly purged. Computers malfunctioned. Evidence of voter fraud arose.

Accusations of fraud and misconduct were rife after the race for governor in Washington. Christine Gregoire finished ahead by 129 votes, and the legal challenge was not resolved until June.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.

The integrity of the Ohio system in 2004 was challenged in part because the chief election official, Secretary of State Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The new panel was organized by American University to address those problems. Its 21 members include politicians from both parties and others with elections experience.

In the 2004 campaign, state primaries and caucuses were held earlier than ever, and the nominees were effectively chosen by March.

Everything happens so quickly now in primary campaigns, the commission asserted, that "most Americans have no say in the selection of presidential nominees."

The commission said it was worthwhile for Iowa and New Hampshire to continue to vote first because "they test the candidates by genuine retail, door-to-door campaigning."

But four regional contests afterward, the panel said, would "expand participation in the process" and "give voters the chance to closely evaluate the presidential candidates over a three- to four-month period."

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Washington Post contributed to this story.

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**Wanna buy a bus? A voting booth?**

[http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB\\_BasicArticle&c=MGArticle](http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB_BasicArticle&c=MGArticle)

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&cid=1031785144388

By GERALD WITT  
Register & Bee staff writer  
Monday, September 19, 2005

DANVILLE, Va. - Some of them wind up at the bottom of the ocean, but Danville is going to auction its retired voting machines on Saturday.

Since the 2002 Help America Vote Act requires localities to get updated polling systems, the question of what to do with the old lever machines arises.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

For their part, Danville officials hope to sell the city's 46 machines - alongside old fleet cars, a bus, dump trucks and lawn mowers - at a surplus auction at 10 a.m. on Sep. 24.

The voting machines are the same behemoths with curtains that were bought in 1957 and used for decades in the city, according to David Parrish, management analyst for Danville.

"They stopped making the machines in 1980," Parrish said. "And I've seen pictures of other machines that are from the '50s and '60s that are identical to what we have."

Manufactured by Automatic Voting Machine Corp. of Jamestown, N.Y., the lever machines were used in elections throughout the United States by the mid-1900s.

In 1944 the company's advertising claimed that 12 million voters used their machines, according to a Web site maintained by Douglas W. Jones, associate professor for the University of Iowa's Department of Computer Science and a principal investigator with ACCURATE - A Center for Correct, Usable, Reliable, Auditable and Transparent Elections, funded by the National Science Foundation.

When the machines were taken out of production they were cannibalized for parts. Some of Danville's units are refurbished with those parts, Parrish said.

But after the 2000 election and the following HAVA legislation, the machines had to go. The lever machines were last used in Danville for the 2004 election, he said. They still contain cards showing presidential candidates George W. Bush and John Kerry.

When expanded, the machines are about 7 feet tall and weigh more than 500 pounds. The new electronic touch-screen polling machines can fit in a suitcase.

As the old ones are removed from service, they end up being used in a number of ways. Most are just trashed, Parrish said, suggesting that they could be stripped to make a small workstation or other enclosed space.

Given some creativity, the lighted units could have a variety of second lives.

Or a history buff could show up at the Danville auction and have one loaded on a truck as a memento of one hotly contested election.

"In 10, 15 or 20 years there's not going to be very many of them left at all," Parrish said. "Everybody's getting rid of them."

No opening bid has been set, but it seems the machines may go cheap.

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"If they don't sell, we'll call up Florida and see if they want some more reefs," he said.

Contact Gerald Witt at [gwitt@registerbee.com](mailto:gwitt@registerbee.com) or at (434) 793-2311 Ext. 3039.

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## County election boards question voter-fraud study

<http://www.app.com/apps/pbcs.dll/article?AID=/20050917/NEWS/50917001>

Published in the Asbury Park Press 09/17/05

BY JAMES A. QUIRK  
FREEHOLD BUREAU

The Monmouth and Ocean County boards of elections are questioning the findings of a study by the Republican State Committee that alleges potentially widespread voter fraud, including a claim that 4,755 votes were cast throughout the state last November in the names of dead people.

Officials with both boards say they want the committee's data for their own verification purposes. They said Friday that they have received no response from the state GOP committee.

At a Trenton press conference Thursday, Republican State Committee Chairman Tom Wilson said that in the 2004 election, 92 double votes were cast in Monmouth County, and 450 votes were cast in the names of those who are dead.

In Ocean County, Wilson said, the GOP study found that 79 people voted twice<sup>11</sup> and that 271 votes were cast in the names of dead people. The study found that overall, 6,572 people registered in both New Jersey and another state appeared to have voted twice in the 2004 election.

"We haven't seen that in Ocean County, that kind of duplicate voting," said Robert Giles, executive supervisor of the Ocean County Board of Elections. "The occasional duplication that may happen is a person getting an absentee ballot, not thinking they sent it, and sending a second . . . We want to see if this is just a misinterpretation of data."

Wilson said the committee has so far verified only "a handful" of the names of duplicate or dead voters that emerged from its study. Despite this, Wilson said he stands behind the study's findings.

"We gave (the state Attorney General's Office) close to 20,000 cases where double ballots were cast," Wilson said. "That's fraud ... you can't vote twice" or if you're dead.

An Asbury Park Press review of 697,000 active voters in Monmouth and Ocean counties found that 794 shared the same names and dates of birth. Of those 794, five appeared to have voted twice ... once in Monmouth and once in Ocean ... during the 2004 presidential election.

But those voters could have been different individuals who just happened to share the same names and birthdays. For example, one woman in Ocean County lived at the same address with a man who was most likely her husband. But in Monmouth County, a woman with the same name had a spouse with a different first name and age.

Both Wilson and Steve Berlin, a consultant for the Republican State Committee who formulated most of the voter data, said the limited depth of their study did not reveal a clear pattern of statewide voter fraud.

"But what we did find presented a whole room of smoke, and we brought it to (state Attorney General) Peter Harvey and asked if there's any fire there," Wilson said.

Lee Moore, a spokesman for Harvey, would only say that the Attorney General's Office is looking into the

GOP committee's allegations.

"Once we have assessed the situation, the determination will be made as to what, if any, action is required," Moore said.

Officials admit there are flaws in New Jersey's county voter registration rolls and the general election process. For example, Franklin Goldstein, administrative assistant with the Monmouth County Board of Elections, said people often do not notify the county when a loved one dies, so the deceased may remain on the county's voter registration roll for years as "inactive" until that person is verified as dead.

The same problem exists when people move from one county to another without informing the county they've left, Giles said. This problem should be eliminated, he said, when New Jersey moves to a statewide registration system, which is to happen in January, as required by the federal Help America Vote Act.

Even with these problems, John Weingart, associate director at the Eagleton Institute of Politics at Rutgers University and a former state Department of Environmental Protection assistant commissioner, said the GOP committee's finding of 54,601 duplicate voters, 4,397 double votes and 4,755 votes cast in the names of dead people is "a dramatic allegation" that's hard to believe.

The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls; and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory.

"The notion that a lot of people would get together and figure out a way to vote more than once, all for a specific candidate, and have no one know about it, is hard to picture," Weingart said.

Investigations editor Paul D'Ambrosio contributed to this story.

James A. Quirk: (732) 308-7758 or [jquirk@app.com](mailto:jquirk@app.com)

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## Allen elections director named to U.S. vote panel

<http://toledoblade.com/apps/pbcs.dll/article?AID=/20050919/NEWS09/50919010/-1/NEWS>

Article published September 19, 2005

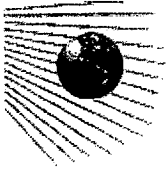
The Toledo Blade

LIMA, Ohio – Keith Cunningham, director of the Allen County Board of Elections, has been appointed to a two-year term on the board of advisers of the U.S. Election Assistance Commission.

The 37-member commission, which was created by the Help America Vote Act of 2002, serves as a national clearinghouse and a resource for information and review of procedures relating to the administration of federal elections.

Mr. Cunningham has been director of the Allen County elections board since 1998 and is president of the Ohio Association of Election Officials.

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Paul DeGregorio/EAC/GOV  
03/16/2006 10:17 AM

To Amie J. Sherrill/EAC/GOV  
cc  
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Subject Fw: Voter ID Paper --Final Draft

Please print this for me.

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03/16/2006 08:57 AM

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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  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM —



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To klynndyson@eac.gov



03/15/2006 08:21 PM

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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 discuss them.

Tom O'Neill



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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.

#### 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

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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.

# FINAL D R A F T

## 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
  - 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.
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- 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
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**FINAL D R A F T**

Appendix

Karen Lynn-Dyson/EAC/GOV

03/17/2006 05:03 PM

To Paul DeGregorio/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Fw: Voter ID Paper --Final Draft

Mr. Chairman-

I thought you might find this detail on the study methodology helpful- it answered a number of the questions I had.

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 03/17/2006 03:59 PM —



"Tom O'neill"

03/16/2006 09:27 AM

To klynndyson@eac.gov

cc

Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone at 908-794-1030.

Tom O'Neill

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

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

**Sent:** Thursday, March 16, 2006 9:00 AM

**To:** tom [redacted]

**Subject:** Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

026297

Will try to see if I can get feedback next week.

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 Vercellotti314.doc

026298



**Analysis of Effects of Voter Identification Requirements on Turnout**  
**Tim Vercellotti**  
**Eagleton Institute of Politics**  
**Rutgers University**

**Introduction**

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. 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 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. 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).

Deleted: , such as a driver's license.

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. It draws on 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**

Each state is classified 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 (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight 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.

Deleted: ID

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. 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

<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.

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). 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.

### Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal 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 voter identification requirements ( $r = -.21$ ,  $p < .0001$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ( $r = -.16$ ,  $p < .0001$ ). 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]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.<sup>2</sup> Taking into account the maximum 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. A similar trend emerged when considering minimum requirements. 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. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. 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. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the

<sup>2</sup> Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. 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.

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). 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 percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>3</sup> 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.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both 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. 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 exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.<sup>4</sup> Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by  $-2 \log$  likelihood in Table 2), shows that the model with interactions provides a better fit to the data ( $p = 0.0003$ ).

Comment [01]

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

<sup>3</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 .40, indicating considerable variation between the states.

<sup>4</sup> The interactions are labeled in Tables 2 and 3 as VID\*African-American, VID\*Hispanic, and VID\*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of  $-0.36 [-0.04 (\text{voter id}) - 0.38 (\text{Hispanic}) + 0.06 (\text{voter id X Hispanic})]$ .

[Table 3 here]

The effects of the minimum requirements are not statistically significant ( $p = 0.15$ ). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference ( $p = 0.08$ ), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates 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. But aggregate data 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). 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>5</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

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<sup>5</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).

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.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, 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 a level 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 much 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.

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The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election. 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 competitive 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 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. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). 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).

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**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, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert 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, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. 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.

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>7</sup> I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

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 under the maximum requirements. In other words, the probability of voting dropped with each level of 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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Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore

<sup>7</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).

variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.<sup>8</sup> If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

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.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

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.<sup>9</sup>

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify

**Comment [o2]:** The turnout figures shown in the analysis of the aggregate data range of 57.3% turnout to 63.1% turnout. When using the individual data based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

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<sup>8</sup> See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

<sup>9</sup> I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

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 difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. 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 conclusion**

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. 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 even a slight decline in turnout has the potential to alter the outcome of a close election.

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The effects of voter identification requirements were more pronounced for specific subgroups. 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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Effects of voter requirements also varied with education. 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.

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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.

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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>10</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 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.

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<sup>10</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 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). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

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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>	63.1 %	<b>State Name</b>	61.3 %
<b>Sign Name</b>	58.6 %	<b>Sign Name</b>	60.4 %
<b>Match Signature</b>	62.1 %	<b>Match Signature</b>	59.2 %
<b>Provide Non-Photo ID</b>	57.8 %	<b>Provide Non-Photo ID</b>	57.6 %
<b>Provide Photo ID</b>	57.3 %	<b>Swear Affidavit</b>	58.7 %
<b>Average Turnout for All States</b>	59.6 %		

**Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

**Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

<b>Variable</b>	<b>Maximum requirements</b>		<b>Minimum requirements</b>	
	<b>Unstandardized Estimate</b>	<b>Standard Error</b>	<b>Unstandardized Estimate</b>	<b>Standard error</b>
<b>Voter ID requirements</b>	-0.04*	0.01	-0.05**	0.01
<b>Hispanic</b>	-0.06	0.05	-0.05	0.05
<b>Black</b>	0.22**	0.04	0.22**	0.04
<b>Other race</b>	-0.23**	0.04	-0.23**	0.04
<b>Age in years</b>	0.01**	0.001	0.01**	0.001
<b>Education</b>	0.12**	0.005	0.11**	0.005
<b>Household income</b>	0.03**	0.003	0.03**	0.003
<b>Married</b>	0.20**	0.02	0.20**	0.02
<b>Female</b>	0.09**	0.01	0.09**	0.01
<b>Battleground state</b>	0.18**	0.04	0.19**	0.04
<b>Competitive race</b>	0.05	0.05	0.05	0.05
<b>Employed</b>	0.05	0.04	0.05	0.04
<b>Member of workforce</b>	-0.04	0.05	-0.04	0.05
<b>Native-born citizen</b>	0.03	0.04	0.04	0.05
<b>Moved within past 6 months</b>	-0.27**	0.03	-0.27**	0.03
<b>Constant</b>	-4.48**	0.20	-4.46**	0.20
<b>Pseudo-R-Squared</b>	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05\*\* p < .01\*\* (two-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.

	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.912	0.911
<b>Sign name</b>	0.906	0.903
<b>Match signature</b>	0.900	0.895
<b>Non-photo ID</b>	0.894	0.887
<b>Photo ID</b>	0.887	----
<b>Affidavit</b>	----	0.878
<b>Total difference from lowest to highest</b>	0.025	0.033
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		



	<b>White voters</b>		<b>Hispanic voters</b>
	<b>Maximum requirement</b>	<b>Minimum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.920	0.922	0.870
<b>Sign name</b>	0.915	0.915	0.849
<b>Match signature</b>	0.909	0.907	0.826
<b>Non-photo ID</b>	0.902	0.899	0.800
<b>Photo ID</b>	0.895	----	----
<b>Affidavit</b>	----	0.890	0.773
<b>Total difference from lowest to highest</b>	0.025	0.032	0.097
<b>N</b>	44,760		2,860
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>			

	<b>18 - 24</b>		<b>25 - 44</b>		<b>45 - 64</b>	<b>65 and older</b>
	<b>Maximum requirements</b>	<b>Minimum requirements</b>	<b>Maximum requirements</b>	<b>Minimum requirements</b>	<b>Minimum requirements</b>	<b>Minimum requirements</b>
<b>State name</b>	0.839	0.831	0.831	0.831	0.936	0.916
<b>Sign name</b>	0.819	0.814	0.820	0.817	0.932	0.910
<b>Match signature</b>	0.797	0.759	0.808	0.803	0.927	0.904
<b>Non-photo ID</b>	0.774	0.775	0.796	0.788	0.923	0.898
<b>Photo ID</b>	0.750	----	0.783	----	----	----
<b>Affidavit</b>	----	0.754	----	0.773	0.918	0.892
<b>Total difference -- lowest to highest</b>	0.089	0.077	0.048	0.058	0.018	0.024
<b>N</b>	5,065		20,066		20,758	9,084
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>						

**Comment [o3]:** Can you add something to this footnote to once again clarify the difference between the very high turnout figures derived from the CPS respondents self-reports and actual measures of turnout which tend to be in the 50%-65% range.

**Table 8. Predicted probability of voter turnout – Voters above and below the poverty line**

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement
<b>State name</b>	0.920	0.922	0.784
<b>Sign name</b>	0.915	0.915	0.772
<b>Match signature</b>	0.909	0.907	0.758
<b>Non-photo ID</b>	0.903	0.899	0.745
<b>Photo ID</b>	0.897	----	----
<b>Affidavit</b>	----	0.891	0.731
<b>Total difference from lowest to highest</b>	0.023	0.031	0.053
<b>N</b>	49,935		5,038

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.

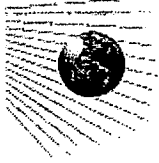
Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

**Table 9. Predicted probability of voter turnout – By education**

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
<b>State name</b>	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
<b>Sign name</b>	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
<b>Match signature</b>	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
<b>Non-photo ID</b>	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
<b>Photo ID</b>	0.708	----	0.833	----	0.939	----	0.957	----
<b>Affidavit</b>	-----	0.705	----	0.824	----	0.940	-----	0.950
<b>Total difference -- lowest to highest</b>	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
<b>N</b>	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.



Paul DeGregorio /EAC/GOV  
03/24/2006 06:00 PM

To ddavidson@eac.gov  
cc  
bcc  
Subject Eagleton ID report

## Comments regarding the Eagleton Report on Voter ID

While the report is generally acceptable, I found some parts of it to be misleading and at times appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing “long lines and limited time,” suggesting that may be a problem for them to check ID. I am not sure what their point may be as poll workers in states that require ID checking will still have to do so no matter how long the voter lines they have. Some states may not have long lines at the polls and voters may not have the “limited time” suggested in the report.

They selectively quote the Carter-Baker Commission study to suggest that “photographic ID requirements for in-person voting do little to address the problem of registration by mail” even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact.

Their table on page 7 indicates that Missouri’s current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state “Provide ID” as they did in listing CO, CN and LA).

On page 9 and in subsequent pages they make reference to “voting age population” (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP. It wasn’t clear. You may remember that Kim Brace talked about the VAP vs. CVAP issue with us extensively and indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses.

I would like to know if the new Census report on the 2004 election released this week changes any of their perspectives.

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is “widely-accepted,” it does make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

026319

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

03/28/2006 10:25 AM

bcc Paul DeGregorio/EAC/GOV

Subject Fw: Voter ID Paper --Final Draft

Let's discuss once you've had a chance to review. As stated, there are a number of their statistical manipulations which I question.

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 03/28/2006 09:20 AM —



"Tom O'Neill"

[Redacted]

To klynndyson@eac.gov

03/16/2006 09:27 AM

cc

Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone at 908-794-1030.

Tom O'Neill

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

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

**Sent:** Thursday, March 16, 2006 9:00 AM

**To:** tom\_oneill [Redacted]

**Subject:** Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

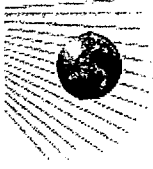
026320

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 Vercellotti314.doc



Paul DeGregorio /EAC/GOV  
03/17/2006 04:46 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV  
bcc  
Subject Re: Voter ID Paper --Final Draft

Karen,  
Are we allowed to make comments on this paper in which they might consider changes --or is this the final version that we are to "accept" as is?  
Paul

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 03/16/2006 08:57 AM  
**To:** Paul DeGregorio; Raymundo Martinez; Gracia Hillman; Donetta Davidson  
**Cc:** Thomas Wilkey; Juliet Thompson-Hodgkins; Amie Sherrill; Adam Ambrogi; Sheila Banks; Elieen Collver  
**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"  
[Redacted]  
03/15/2006 08:21 PM

To klynndyson@eac.gov  
cc "Tim Vercellotti" <tim.vercellotti@[Redacted]>, arapp@[Redacted], davander@[Redacted], dlinky@[Redacted], ireed@[Redacted], joharris@[Redacted], john.weingart@[Redacted], rmandel@[Redacted], "Johanna Dobrich" <jdobrich@[Redacted]>, tokaji.1@[Redacted], foley.33@[Redacted], lauracw@[Redacted]  
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 discuss them.

Tom O'Neill



ReportFinalDraft.doc

026323

Jeannie Layson /EAC/GOV  
09/15/2006 04:21 PM

To pdegregorio@eac.gov  
cc  
bcc  
Subject Bill Lambrecht

History:  This message has been replied to

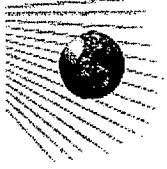
Mr. Chairman,

We're in business. He had decided to go a different direction for the story he interviewed you for... it ended up being about voter ID, and he didn't quote you. So, he's going to do a piece about you that will run the Wednesday before the meeting. He's going to call Blount & Aiken for quotes, and said the St. Louis folks will talk to people there. He said it will also help promote the meeting. He liked the hook about you going out doing two things you've always wanted to do: 1) having a meeting in your hometown and 2) at your alma matter. I told him off the record you were being courted and could possibly end up working for the current administration.

He wants to talk to you on Tuesday, so I'll get with Amie to figure out a time. Also, do you mind if I send him your latest CV?

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)

026324



Paul DeGregorio /EAC/GOV

09/15/2006 04:34 PM

To Jeannie Layson/EAC/GOV@EAC

cc

bcc

Subject Re: Bill Lambrecht 

Thanks. Yes, send him the CV.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson

**Sent:** 09/15/2006 04:21 PM

**To:** Paul DeGregorio

**Subject:** Bill Lambrecht

Mr. Chairman,

We're in business. He had decided to go a different direction for the story he interviewed you for... it ended up being about voter ID, and he didn't quote you. So, he's going to do a piece about you that will run the Wednesday before the meeting. He's going to call Blount & Aiken for quotes, and said the St. Louis folks will talk to people there. He said it will also help promote the meeting. He liked the hook about you going out doing two things you've always wanted to do: 1) having a meeting in your hometown and 2) at your alma matter. I told him off the record you were being courted and could possibly end up working for the current administration.

He wants to talk to you on Tuesday, so I'll get with Amie to figure out a time. Also, do you mind if I send him your latest CV?

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)

026325

Matthew  
Masterson/EAC/GOV  
02/05/2007 05:00 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc

Subject Fw: Voter ID materials

Commissioner:

Karen sent this e-mail to me and I wanted to make sure that you had these materials as well. She informed me that you should have these already but I figured I would forward these along just in case you didn't have them. I am reading over them right now and will share my thoughts with you when we get a chance to talk.

Matthew V. Masterson, Esq.  
Special Assistant to Commissioner Paul DeGregorio  
U.S. Election Assistance Commission  
1225 New York Ave. NW, Washington, D.C.  
(202)566-3106

— Forwarded by Matthew Masterson/EAC/GOV on 02/05/2007 04:58 PM —

Karen Lynn-Dyson/EAC/GOV

02/05/2007 04:09 PM

To Sheila A. Banks/EAC/GOV@EAC, Matthew  
Masterson/EAC/GOV@EAC  
cc Elieen L. Kuala/EAC/GOV@EAC  
Subject Voter ID materials

Sheila/Matt-

Attached are materials which your Commissioners may find useful for Thursday's meeting.

I am also preparing a series of additional questions for Commissioner Davidson, which she may be sharing with her colleagues.

K



New EAC Voter ID Report.doc VoterIDReport062806INAL.pdf EAC Voter ID draft-long version.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

026326

## **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. HAVA Section 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 sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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 which are detailed in the attached report.

### **EAC Recommendations for further study and next steps**

EAC finds this initial review of States' voter identification requirements, state laws and litigation surrounding the implementation of voter identification requirements an important beginning step in its consideration of voter identification requirements. From this study and compilation of data EAC considers it advisable to engage in a longer-term, systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements.
- A review and study of how voter identification requirements are implemented and how these practices may vary from state law and statute.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

EAC believes that the findings from this initial study of voter identification requirements are helping inform additional studies it is conducting on a variety of related topics. The EAC study on first time voters who have registered to vote by mail and several forthcoming studies related to voter registration processes will provide necessary additional data to help inform discussions and debate related to ballot access and ballot security. The EAC also anticipates that follow-on study it does related to election crimes and various aspects of voting accessibility will also help inform and guide these ballot security and ballot access discussions.

Finally, EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout and voter registration figures;
- A research study which examines, in greater detail, the relationship between race and voter turnout, and race and methods for registering voters;
- Studies on the inter-relationship between various voter registration processes, voter turnout and number of election crimes reported or litigated;
- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes;
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.

**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

**Report to the  
U. S. Election Assistance Commission**

**Best Practices to Improve Voter Identification Requirements**

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## 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

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  
Eagleton Institute of Politics

Daniel P. Tokaji  
Assistant Professor of Law  
The Moritz College of Law

John Weingart  
Associate Director  
Eagleton Institute of Politics

Thomas M. O'Neill  
Consultant, Eagleton Institute of Politics  
Project Director

Dave Andersen  
Graduate Assistant,  
Eagleton Institute of Politics

John Harris  
Graduate Assistant  
Eagleton Institute of Politics

Donald Linky  
Senior Policy Fellow  
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  
Eagleton Institute of Politics

Laura Williams  
The Moritz College of Law

### **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.

R. Michael Alvarez  
Professor of Political Science  
California Institute of Technology

John C. Harrison  
Massee Professor of Law  
University of Virginia School of Law

Martha E. Kropf  
Assistant Professor Political Science  
University of Missouri-Kansas City

Daniel H. Lowenstein  
Professor of Law, School of Law  
University of California at Los Angeles

Timothy G. O'Rourke  
Dean, Fulton School of Liberal Arts  
Salisbury University

Bradley Smith  
Professor of Law  
Capital University Law School

Tim Storey  
Program Principal  
National Conference of State Legislatures

Peter G. Verniero  
former Attorney General, State of New Jersey  
Counsel, Sills, Cummis, Epstein and Gross, PC

# **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

---

## **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

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



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>5</sup>	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID <sup>6</sup>	Photo ID	Photo ID^^	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.)

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.

## 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

## **EAC Report on Voter Identification**

### **Executive Summary**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 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 sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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 found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## **Introduction**

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

## **Methodology of the Study**

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook 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. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC

survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## **Study Oversight and Methodological Review**

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

### **The Eagleton Institute of Politics Peer Review Group**

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### **The EAC Peer Review Group**

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninsky, Massachusetts Institute of Technology

## **Summary of the Research**

### **Maximum and Minimum Voter Identification Requirements**

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: 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. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the “maximum” requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data**) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit?????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### **Aggregate-level statistical analysis**

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r=-.30$ ,  $p$  less than  $.05$ ). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r=-.20$ ,  $p=.16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. 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 was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

**(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)**

### **Multivariate models of analysis using aggregate-level data**

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo

identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. (**why is the N is Table 3 54,973?**)

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race (**explain**).
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting (**high income or low income, single, married?**),
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.



## **Analysis of the predicted probability of voter turnout using the individual data**

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- 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 and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state 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. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- 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, while they were 6.1

percent less likely to vote where non-photo identification was the minimum requirement.

- 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 those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the “on the ground” experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

## **Public Policy and Administrative Considerations**

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies that will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## **Recommendations and Next Steps**

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue  
Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

Jeannie Layson /EAC/GOV  
02/06/2007 03:09 PM

To ddavidson@eac.gov, ghillman@eac.gov,  
pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov,  
klynndyson@eac.gov  
bcc  
Subject Voter ID talking pts

Commissioners,  
Attached are suggested talking pts for the voter ID segment of the public meeting. Please let me know if you have questions or edits. After I receive everyone's input, I will circulate a final version.

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) 2-8-07 Eagleton Talking Pts.doc

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## **VOTER ID REPORT TALKING POINTS**

### **Public Meeting**

**February 8, 2007**

#### **I. Chair Davidson's Opening Comments for Eagleton Portion of Public Meeting**

- This has been a highly anticipated report.
- We received the Eagleton draft in June 2006.
- We immediately realized that the data presented more questions than answers.
- Since we have limited staff and resources, we were unable to immediately resolve these questions. Our top priorities at the time were the lab accreditation and the voting system certification programs.
- In addition, we had to focus our efforts on getting information to election officials and the public concerning the November elections, especially because so many jurisdictions were using new voting equipment.
- Now that we have launched those programs, we are once again turning our attention to this research project.
- Let me introduce Tom O'Neil and Tim Vercellotti. They are here today to pick up where we left off, and to give us a brief overview of the research they conducted regarding voter identification.

#### **II. Karen Lynn-Dyson Testimony**


#### **III. Eagleton Testimony**

#### **IV. Commissioners Q&A**

#### **V. Chair Closes Eagleton Portion of Public Meeting**

- Obviously many questions have been raised today.
- Next step is for EAC to determine how to move forward.
- I request that Tom instruct staff to provide recommendations on how to proceed within the next 30 days.
- Once we determine how to move forward and what the final culmination of this initial research will be, we will notify everyone.
- Thank you Tom and Tim for your hard work and efforts in the study of this important topic.

Karen Lynn-Dyson/EAC/GOV  
02/06/2007 04:46 PM

To Jeannie Layson/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC  
cc ddavidson@eac.gov, ghillman@eac.gov,  
jthompson@eac.gov, pdegregorio@eac.gov,  
twilkey@eac.gov  
bcc  
Subject Re: Voter ID talking pts 

Bert, et.al-

Here is the testimony Jeannie and Julie just approved

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

Jeannie Layson /EAC/GOV

02/06/2007 03:09 PM

To ddavidson@eac.gov, ghillman@eac.gov, pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, klyndyson@eac.gov  
Subject Voter ID talking pts

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Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100

026375



www.eac.gov 2-8-07 Eagleton Talking Pts.doc Karen Dyson testimony for Voter ID meeting.doc



## **VOTER ID REPORT TALKING POINTS**

### **Public Meeting**

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- Once we determine how to move forward and what the final culmination of this initial research will be, we will notify everyone.
- Thank you Tom and Tim for your hard work and efforts in the study of this important topic.

## **Remarks for Thursday's Public Meeting**

In late May, 2005 this research contract awarded to The State University of New Jersey at Rutgers-- The Eagleton Institute of Politics using the Ohio State University Moritz School of Law, as its subcontractor.

The portion of the contract that was awarded related to the study and analysis of voter identification requirements was to :

- Collect and analyze state legislation, administrative procedures and court cases.
- Create a state-by-state compendium of the legislation, procedures, and litigation reviewed.
- Perform an analysis of how voter identification requirements were implemented around the country and to
- Recommend alternative approaches related to the future implementation of HAVA voter identification requirements. These recommendations were to be based on a literature review of research results, a review of data on voter identification and a diagnosis of the problems and challenges related to voter identification.

This contract was extended on two occasions to allow for additional review, including an EAC-initiated review conducted by an independently convened panel of experts who provided input to Eagleton on the first draft of its statistical analysis of voter identification requirements.

The Eagleton Institute of Politics submitted its draft report to the EAC on Best Practices to Improve Voter Identification Requirements on June 28, 2006. Findings from Eagleton's study of provisional voting (that was a part of Eagleton's overall study) were included in EAC's Best Practices on Provisional Voting, which were published by EAC in October 2005.

Bryan Whitener /EAC/GOV  
02/21/2007 05:47 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 2-21-07, Wed )

Commissioners:

Today we had the following media inquiries:

(1) Commissioner Hillman was interviewed by Charles Edwards of NPR in Atlanta about the Standards Bd. meeting. She explained the role of the board, talked about the agenda, including the visit to Kennesaw, and told him GA SOS Handel is on the board. She provided an overview of our voting system standards setting process and our programs to accredit labs and to test and certify systems. She also talked about the importance of gaining public confidence in the voting equipment they use, and talked about our responsibility to bring more accountability to the process.

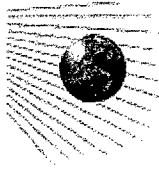
(2) Jim Galloway of the Atlanta Journal Constitution wanted the report on voter ID. We explained that we had been working with the Eagleton Institute to study issues related to voter ID. We held a public meeting earlier this month in which we discussed this project to provide an update on progress being made. At the meeting, EAC commissioners asked the researchers questions about what they'd found so far, methodology, etc. At the conclusion of the questions, EAC Chair Donetta Davidson instructed EAC staff to take a look at Eagleton's recommendations for moving forward and w/n 30 days present the commissioners with suggestions for further research about voter ID laws. She noted that she thought it was important to study more than one election cycle, since some of these ID laws are so new. We sent him the Eagleton testimony. He requested info about the paper presented by Eagleton that referenced the statistics they collected for us, and we sent it to him.

(3) Josh Stager of Congressional Quarterly asked for the Eagleton report on voter ID. We referred him to the testimony on our website and explained that the presentation by Eagleton consisted of a briefing to EAC on their research. We said that the commissioners did not vote on or decide anything with regard to the research. We said that the chair asked the executive director to develop staff recommendations regarding the research to present to the commissioners within thirty days.

(4) Ken Vogel of Politico called Curtis and asked if the OIG had researched the qualifications of the two new commissioners. Curtis said no, that was part of the nomination process. The reporter asked if the OIG was looking into the Ciber issue, and Curtis said he could not comment on that.

###

026379



Paul DeGregorio /EAC/GOV

10/18/2005 05:17 PM

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

bcc Juliet E. Thompson/EAC/GOV

Subject Re: Research Grants 

Hans,

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You may recall that the Advisory Board made it clear to the EAC that they thought the Voter Fraud/Voter Intimidation issues should be studied together. That's why Ms. Wang has been paired with Mr. Serebrov to do this study.

Julie tells me that she had a wide-ranging discussion with you last week but you never brought this issue up. It's too bad, as it may have prevented you from sending an e-mail to so many people that contains only half the story.


**Paul DeGregorio**  
Vice 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

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



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

10/18/2005 03:45 PM

To "gmhillman@eac.gov" <gmhillman@eac.gov>,  
"rmartinez@eac.gov" <rmartinez@eac.gov>,  
"pdegregorio@eac.gov" <pdegregorio@eac.gov>,  
"eac.gov" <jthompson@eac.gov/twilke>,  
"ddavison@eac.gov" <ddavison@eac.gov>  
cc "christophert@.gov"

026330



<christophert@...>, "bkaufman@..."  
<bkaufman@...>, "dlewis@..."  
<dlewis@...>, "tjsthree@..."  
<tjsthree@...>, "wrklinerjr@..."  
<wrklinerjr@...>

Subject Research Grants

Dear Commissioners:

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I have just learned that a similar situation has occurred. I understand that another research grant has been awarded to Tova Wang for research into "voter fraud and voter intimidation." Ms. Wang has an even more pronounced partisan and one-sided view of these issues than was present in the situation involving Moritz College. She has many posted opinions available on the Internet that make it clear that she will not be able to conduct research in an objective fashion on these issues. Just a few examples illustrate this:

"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.'"

"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."

"...voters are individually disenfranchised by continued, often race based, voter intimidation and deceptive practices..."

Carter-Baker Report: Some Bad Fixes for the Wrong Problem, 9/19/2005

"The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities...Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?"

Voter ID and Fraud: Prove It, 7/28/2005

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026381

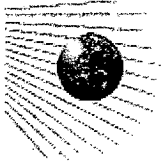
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Whatever procedures the EAC has set up to screen individuals and entities applying for research grants is obviously not working. I have no doubt that I could today, based on reading Ms. Wang's prior opinions, predict exactly what her report will conclude on the issues of voter fraud and voter intimidation. This situation needs to be corrected so that research is not being conducted by partisan individuals with preset opinions and views on issues. As with my prior email, I strongly recommend that the EAC reconsider the awarding of this contract.

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026382



Paul DeGregorio/EAC/GOV  
10/25/2005 05:07 PM

To Karen Lynn-Dyson  
cc  
bcc  
Subject Fw: Research Grants

see e-mail traffic below

— Forwarded by Paul DeGregorio/EAC/GOV on 10/25/2005 05:07 PM —



"Hans.von.Spakovsky@usdoj  
.gov"  
<Hans.von.Spakovsky@usdo  
j.gov>  
10/19/2005 09:49 AM

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
Subject RE: Research Grants

perhaps if the Board of Advisors were kept better informed, I would not have been put into this position.

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

From: pdegregorio@eac.gov [mailto:pdegregorio@eac.gov]  
Sent: Tuesday, October 18, 2005 5:18 PM  
To: von Spakovsky, Hans (CRT)  
Subject: Re: Research Grants  
Importance: High

Hans,

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026333

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Vice Chairman  
US Election Assistance Commission  
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202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To

"'gmhillman@eac.gov'" <gmhillman@eac.gov>, "'rmartinez@eac.gov'"  
<rmartinez@eac.gov>, "'pdegregorio@eac.gov'" <pdegregorio@eac.gov>,  
"'eac.gov'" <jthompson@eac.gov/twilke>, "'ddavison@eac.gov'"  
<ddavison@eac.gov>

cc

"'christophert@[REDACTED]'" <christophert@[REDACTED]>,  
"'bkaufman@[REDACTED]'" <bkaufman@[REDACTED]>,  
"'dlewis@[REDACTED]'" <dlewis@[REDACTED]>,  
"'tjsthree@[REDACTED]'" <tjsthree@[REDACTED]>, "'wrklinerjr@[REDACTED]'"  
<wrklinerjr@[REDACTED]>

Subject

Research Grants

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026384



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Counsel to the Assistant Attorney General

026385

Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

026386

**EAC Research Projects FY05\***

	<b>Subject of Study</b>	<b>Deliverable/Product</b>	<b>Due date</b>
1.	Vote Count/Recount Procedures	Final study report. State-by-state compendium of procedures.	Final report in EAC staff review
2.	Legal Clearinghouse	Case law/legal statute database on election laws.	February 28, 2007
3.	Poll Worker Recruitment	250 page manual. Follow-on technical assistance training?	January 30, 2007
4.	College Poll Worker Recruitment	75 page manual. State-by-state compendium of pollworker requirements.	Final report in EAC staff review
5.	Voter Information Access Portals	Report on best practices for voter information websites.	Final report in EAC staff review
6.	Voting Fraud and Intimidation	EAC statement on recommendations for further study. Follow-on election crimes study?	Completed. Next steps under EAC review.
7.	Effective Designs for Election Administration	Exhibits of good ballot designs and polling place signs	Final report due March 30, 2007
8.	Provisional Voting & Voter ID	EAC statement on best practices in provisional voting. EAC statement on recommendations for further study?	Final reports in EAC staff review
9.	Election Day Survey	Data analysis of key data points. Posting of results through EAC website GIS system.	March 7, 2007
10.	Voter Registration Database Technology Assistance	Roundtable discussions with election officials and experts. Interim report and final report on implementation of VR databases	First roundtable March, 2007
11.	First Time Voters who Register by Mail	Report on focus group findings. Six state case studies.	Submitted by March 30, 2007
12.	Free Absentee Ballot Postage	Report on findings of national survey. Report on focus group findings Public hearing with EAC and the USPS	Submitted by May 30, 2007

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13.	Internet Voting	Report on findings of survey of UOCAVA voters. Four state case studies. A conference on internet/electronic voting	Case studies April, 2007. Conference May, 2007
14.	Social Security Study	Report on findings of a survey of the public and private sector on their uses of social security data, a public meeting on the use of social security information	Submitted by May 30, 2007
15.	Alternative Voting Methods	Literature review on international alternative voting methods, six state case studies, national survey of registered voters	Literature review and case studies under EAC staff review. Survey due September, 2007.
16.	Website translation and translation of election terms	Posting of glossary of election terms and website translation into Spanish on EAC's website	Final report in EAC staff review
17.	Voter Hotline Project	National survey of federal and state government voter hotlines, report of findings.	Submitted by June 30, 2007

GMHILLMAN  
Sent by: Gracia Hillman

10/26/2005 06:29 PM

To "Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL  
cc "bkaufman@██████████" <bkaufman@██████████>,  
"christophert@██████████"  
<christophert@██████████>, d davidson@eac.gov,  
bcc

Subject Re: Research Grants - Response 

Dear Hans:

I am writing in response to your email in which you took exception to our retaining Ms. Tova Wang as a part-time consultant to help EAC explore the issues of voter fraud and voter intimidation. I know that you have heard directly from Vice Chairman DeGregorio and Commissioner Martinez on the matter but I thought it important that I write back to make certain that everyone had the same information.

As you now know, Ms. Wang is only one consultant who is working with us on these issues. When EAC determined that we should explore our options on how to study the issues of voter fraud and voter intimidation, as required under HAVA Section 241 (b), we made a conscious decision to retain consultants who would work part-time for a defined and limited period of time to provide broad and diverse perspectives, across the political spectrum, from right to left and including the middle.

EAC conducted broad outreach to identify a strong pool of consultant candidates. We reached agreement to retain 3 highly qualified people -- Stephen Ansolabehere, Job Serebrov and Tova Wang -- to work with us as we try to determine the scope of any project we might do on these issues.

Unfortunately, Dr. Ansolabehere's teaching assignments unexpectedly precluded him from being able to work as a part-time consultant but he has expressed his desire and in fact has agreed to continue working with us in an unpaid capacity as we explore our options and frame the issues. In the meantime, Mr. Serebrov and Ms. Wang have agreed to provide the consultant services that we sought. We believe that all three individuals will bring great value, careful thought and important perspectives to our work on these issues.

I hope this clarifies this part of EAC's extensive research and study agenda. EAC engages thoughtful deliberation and undertakes careful consideration of all of its activities. We value inclusiveness and know that we are best served when we have broad and diverse perspectives to inform our work. I am happy to talk with you at any time that you might have questions or concerns about our work.

Best Regards,

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

CONFIDENTIALITY NOTICE: This email message is from a federal agency. 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

026389

you received this message in error, please notify the sender immediately by replying to this message and please delete this message from your computer.

Jeannie Layson /EAC/GOV  
06/27/2006 05:18 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ddavidson@eac.gov, ghillman@eac.gov  
cc EAC Staff

bcc

Subject FYI ONLY: Today's media inquiries

1. Alexandria Burris of the Daily Advertiser (LA) wanted to know the mandatory requirements of HAVA, and I sent them to her. She then said a local clerk says even though HAVA only applies to equipment bought for federal elections, they ended up buying new equipment for state and local elections too, and isn't that just a sneaky way/blurring of the lines to impose mandates at the state level? I told her according to LA law, all voting machines used in the state are purchased by the secretary of state. I told her HAVA only applies to federal elections, and that it is up to each state whether to apply those same requirements to its local and state elections. Therefore, this is a question for the Louisiana secretary of state regarding what kind of equipment they purchase for local and state elections. I suggested that she call Marietta Norton (who I spoke to first) in the Louisiana secretary of state's office.

2. Zach Goldfarb of the Washington Post interviewed the chairman about the findings of the Brennan Center report, issued today. The chairman told him that equipment is only half of the equation, that officials had to have solid management guidelines in place, and told him about Quick Start and gave him a few examples. (We also sent him a link to Quick Start.) He also talked about the Election Management Guidelines we were working on. He also pointed out the security work we'd done with the VVSG, and noted that we asked for an increase from \$2.8M to \$5M for NIST to work on future iterations. He also talked about our certification program, and that it would be rigorous, thorough and transparent. Regarding efforts to make equipment like VVPAT mandatory, the chairman said it was important to recognize that this is a diverse country with diverse election needs, and that one size doesn't fit all. He said election officials were taking the security concerns very seriously and that they were implementing procedures at the local level. He encouraged the reporter to talk to election officials about this issue, since there were none listed on the Brennan Center's task force for this report. We suggested Dana DeBeauvoir in TX.

3. Commissioner Davidson was interviewed by several media outlets in Utah, and she attributed the success of the elections to the state's efforts to increase training and provide more education about the process for voters.

4. Scott Michels of US News and World Report heard about our voting fraud and voter intimidation research, and he had the following questions. The following responses were provided after conferring with Peg and Tom. 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.

I also told him that the researchers were charged with conducting preliminary background research and that they 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)


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methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud. I told him 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: 1) nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and 2) ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)]. And I pointed out that 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](http://www.eac.gov)

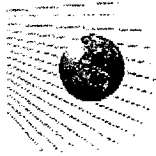


Jeannie Layson /EAC/GOV  
10/11/2006 08:49 AM


To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Usa today 

I think it's a no big deal situation if another reporter or anyone else (Hill staff or otherwise) asks about it... it was a preliminary report that we shared with our advisory boards. When the final report is done, we'll release it. Also, I shared this media inquiry and the fact that we gave Rich the info with the entire staff and commishes in an Oct. 5 media log, if anyone feigns surprise.

Jeannie Layson  
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Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 08:14 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Re: Usa today 

Yes. I was worried when I saw the headline. The article gives the impression that we are hiding the report. I told Wolf that it was only preliminary and that we were waiting for another but that the staff member overseeing it had been out a lot due to illness.

-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 10/11/2006 08:13 AM  
**To:** Paul DeGregorio  
**Subject:** Re: Usa today

Yes. I thought your quote was good.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 08:01 AM

To Jeannie Layson/EAC/GOV

026393




cc

Subject Usa today

Our fraud report is on the front page.

-----  
Sent from my BlackBerry Wireless Handheld

Jeannie Layson /EAC/GOV  
10/11/2006 09:15 AM


To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: USA Today 

Yes, will do.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 09:07 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Re: USA Today 

Perhaps you might want to use the word "advisory" instead of "oversight"

-----  
Sent from my BlackBerry Wireless Handheld

---

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

**From:** Jeannie Layson  
**Sent:** 10/11/2006 08:22 AM  
**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson  
**Cc:** Thomas Wilkey; Juliet Hodgkins; Margaret Sims; Bryan Whitener  
**Subject:** USA Today

See story below that ran in today's USA Today. This reporter requested the info a few weeks ago, and we had to release it b/c it was distributed at a Standards Bd. meeting, which is considered a public venue. Also, the document was not labeled draft.

I anticipate that we may get questions about why we haven't released it. I propose the following response. Please let me know if you approve. The story follows.

"This was a preliminary report presented to our oversight committees. The EAC is waiting on a final report, which we will release upon its completion."

026395

## Report refutes fraud at poll sites

Updated 10/11/2006 8:05 AM ET

By Richard Wolf, USA TODAY

WASHINGTON — At a time when many states are instituting new requirements for voter registration and identification, a preliminary report to the U.S. Election Assistance Commission has found little evidence of the type of polling-place fraud those measures seek to stop.

USA TODAY obtained the report from the commission four months after it was delivered by two consultants hired to write it. The commission has not distributed it publicly.

### **NEW LAWS: Thousands of voters shut out**

At least 11 states have approved new rules for independent voter-registration drives or requirements that voters produce specific forms of photo ID at polling places. Several of those laws have been blocked in court, most recently in Arizona last week. The House of Representatives last month approved a photo-ID law, now pending in the Senate.

The bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address. "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," the report says.

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. Wang declined to comment on the report, and Serebrov could not be reached for comment.

Others who reviewed the report for the election commission differ on its findings. Jon Greenbaum of the liberal Lawyers' Committee for Civil Rights Under Law says it was convincing. The committee wrote to the commission Friday seeking its release.

Conservatives dispute the research and conclusions. Thor Hearne, counsel to the American Center for Voting Rights, notes that the Justice Department has sued Missouri for having ineligible voters registered, while dead people have turned up on the registration rolls in Michigan. "It is just wrong to say that this isn't a problem," he says.


That's one reason the commission decided not to officially release the report. "There was a division of opinion here," Chairman Paul DeGregorio says. "We've seen places where fraud does occur."

The consultants found little evidence of that. Barry Weinberg, former deputy chief of the voting section in the Justice Department's civil rights division, reviewed their work. "Fraud at the polling place is generally difficult to pull off," he says. "It takes a lot of planning and a lot of coordination."

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[www.eac.gov](http://www.eac.gov)

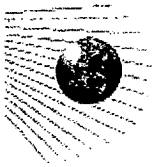
026396

Jeannie Layson /EAC/GOV  
10/11/2006 09:34 AM


To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: USA Today 

Also, you may want to touch base with Rokita, since he was a member of the working group.

Jeannie Layson  
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Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 09:07 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Re: USA Today 

Perhaps you might want to use the word "advisory" instead of "oversight"

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 10/11/2006 08:22 AM  
**To:** Paul DeGregorio; Gracia Hillman; Donetta Davidson  
**Cc:** Thomas Wilkey; Juliet Hodgkins; Margaret Sims; Bryan Whitener  
**Subject:** USA Today

See story below that ran in today's USA Today. This reporter requested the info a few weeks ago, and we had to release it b/c it was distributed at a Standards Bd. meeting, which is considered a public venue. Also, the document was not labeled draft.

I anticipate that we may get questions about why we haven't released it. I propose the following response. Please let me know if you approve. The story follows.

"This was a preliminary report presented to our oversight committees. The EAC is waiting on a final report, which we will release upon its completion."

026397

## Report refutes fraud at poll sites

Updated 10/11/2006 8:05 AM ET

By Richard Wolf, USA TODAY

WASHINGTON — At a time when many states are instituting new requirements for voter registration and identification, a preliminary report to the U.S. Election Assistance Commission has found little evidence of the type of polling-place fraud those measures seek to stop.

USA TODAY obtained the report from the commission four months after it was delivered by two consultants hired to write it. The commission has not distributed it publicly.

### **NEW LAWS:** Thousands of voters shut out

At least 11 states have approved new rules for independent voter-registration drives or requirements that voters produce specific forms of photo ID at polling places. Several of those laws have been blocked in court, most recently in Arizona last week. The House of Representatives last month approved a photo-ID law, now pending in the Senate.

The bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address. "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," the report says.

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. Wang declined to comment on the report, and Serebrov could not be reached for comment.

Others who reviewed the report for the election commission differ on its findings. Jon Greenbaum of the liberal Lawyers' Committee for Civil Rights Under Law says it was convincing. The committee wrote to the commission Friday seeking its release.

Conservatives dispute the research and conclusions. Thor Hearne, counsel to the American Center for Voting Rights, notes that the Justice Department has sued Missouri for having ineligible voters registered, while dead people have turned up on the registration rolls in Michigan. "It is just wrong to say that this isn't a problem," he says.

That's one reason the commission decided not to officially release the report. "There was a division of opinion here," Chairman Paul DeGregorio says. "We've seen places where fraud does occur."

The consultants found little evidence of that. Barry Weinberg, former deputy chief of the voting section in the Justice Department's civil rights division, reviewed their work. "Fraud at the polling place is generally difficult to pull off," he says. "It takes a lot of planning and a lot of coordination."

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026398

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

History:  This message has been replied to

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.

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026399

Margaret Sims /EAC/GOV  
10/11/2006 12:31 PM

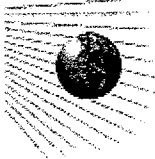
To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, bwhitener@eac.gov  
bcc

Subject Re: Voting Fraud-Voter Intimidation Report 


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 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

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Margaret Sims/EAC/GOV  
10/11/2006 12:34 PM

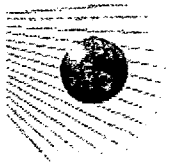
To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC  
bcc

Subject Re: Voting Fraud-Voter Intimidation Report 


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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  
Subject Re: Interview Request 

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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

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026403



Amie J. Sherrill/EAC/GOV

10/11/2006 01:55 PM

To Paul DeGregorio/EAC/GOV@EAC

cc

bcc

Subject Voting Fraud.Voter Intimidation.pdf

History

 This message has been forwarded.

The report is attached.

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



- Voting Fraud.Voter Intimidation.pdf

026404



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

## 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



Jeannie Layson /EAC/GOV

10/18/2006 11:46 AM

To pdegregorio@eac.gov

cc asherrill@eac.gov, bwhitener@eac.gov

bcc

Subject Interview request

Mr. Chairman,

Chuck McCutchen of Newhouse News Service wants to interview you tomorrow at 11:30 regarding absentee voting, and your thoughts about whether this presents more opportunities for fraud. He asked for and I sent him the status report on fraud, but he's focused on the absentee voting angle. He knows you were a former elections official and have first hand experience with this issue. The interview would last about 15 min. Newhouse owns about 25 newspapers scattered throughout the nation. Please let me know if you can accomodate him. If so, we are to call him at [REDACTED]

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

026417

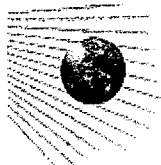


Amie J. Sherrill/EAC/GOV  
10/20/2006 04:34 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Letter to Mr. Reynolds Re: Voter Fraud Report

I will do that.

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  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/20/2006 04:25 PM

To Amie J. Sherrill/EAC/GOV@EAC  
cc  
Subject Re: Letter to Mr. Reynolds Re: Voter Fraud Report

Let's wait until Monday AM.

-----  
Sent from my BlackBerry Wireless Handheld  
Amie J. Sherrill  
----- Original Message -----

**From:** Amie J. Sherrill  
**Sent:** 10/20/2006 04:26 PM  
**To:** Paul DeGregorio  
**Subject:** Fw: Letter to Mr. Reynolds Re: Voter Fraud Report

Attached is a draft letter from Julie to Mr. Reynolds of the Comm. on Civ Rights. It contains the same language as the other letters we have sent. Please let me know if you would like for me to use your e-signature and get it faxed to them this afternoon.

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

----- Forwarded by Amie J. Sherrill/EAC/GOV on 10/20/2006 04:23 PM -----



DeAnna M. Smith/EAC/GOV  
10/20/2006 04:02 PM

To Amie J. Sherrill/EAC/GOV@EAC  
cc  
Subject Letter to Mr. Reynolds Re: Voter Fraud Report

[attachment "draft letter to Mr Reynolds.doc" deleted by Paul DeGregorio/EAC/GOV]

DeAnna M. Smith  
Paralegal Specialist  
Office of the General Counsel  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, D.C. 20005  
202-566-3117 (phone)  
202-566-1392 (fax)  
[www.eac.gov](http://www.eac.gov)

026419



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"

History: This message has been replied to


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

Jeannie Layson /EAC/GOV  
10/23/2006 10:18 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: The Fraud "Report" 

Absolutely agree.

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio  
----- Original Message -----

**From:** Paul DeGregorio  
**Sent:** 10/23/2006 10:15 PM  
**To:** Gracia Hillman; Thomas Wilkey; Donetta Davidson  
**Cc:** Juliet Hodgkins; Jeannie Layson  
**Subject:** Re: The Fraud "Report"

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

026421



Gracia Hillman /EAC/GOV

10/24/2006 07:47 AM

To Paul DeGregorio/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, "Sheila Banks" <sbanks@eac.gov>

bcc

Subject Re: The Fraud "Report"

I agree about mention of the 4th Anniversary.

Also at Thursday's meeting, I intend to say something in special recognition of Poll Workers.

Julie: Is it too late to do a Commissioners' Proclamation on this?

-----  
Sent from my BlackBerry Wireless Handheld

026422

Jeannie Layson /EAC/GOV  
09/19/2006 11:17 AM

To pdegregorio@eac.gov  
cc asherrill@eac.gov  
bcc  
Subject Interview Requests for Tomorrow

Mr. Chairman,

Two more interview requests for tomorrow:

1. NPR's News and Notes would like to have you as a guest on their program tomorrow morning at 8 a.m. EST for five to eight minutes. Topic: Your thoughts on the states that are cracking down on voter fraud through voter ID laws, registration policies, etc. Also, they want your take on the Fed. Election Integrity Act, the bill sponsored by Hyde regarding voter ID which will be dropped this week. The interview would be taped, and it would run at 9 a.m. EST. News and Notes explores issues that impact the African American community. You will be interviewed by Farai Chideya (Fah-rah Chu-day-ah). Go here <http://www.npr.org/templates/story/story.php?storyId=11> to read more about the program and the host. You are to call 310-815-4302 from a land line. Backup: Producer Devin Robbins at 310-815-4379.

2. Mary Ann McGee of Information Week is working on a story about voting system security. I talked to her about our efforts to help election officials focus on the entire process, not just the voting machine. I sent her the Quick Start guide. She's interested in hearing more about this from you. This is a good opportunity to get the message out that the real challenges we face in Nov. are having enough people and making sure they are properly trained. She wants to talk to you at 10:30 am EST. You are to call her at 508-697-0083.

Please let me know if you will be able to accomodate these reporters, and I'll take it from there. 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)

026423



Amie J. Sherrill/EAC/GOV

09/26/2006 05:05 PM

To Paul DeGregorio/EAC/GOV@EAC

cc

bcc

Subject Speech for Election Fraud Conference

Chairman,

Here is the speech I have prepared for the Election Fraud Conference. There is room to expand if there are comments that you would like to add. I used what information I could to bring together the topics. Let me know what else you would like to add. Also, there is powerpoint available at the conference if you would like me to put together a slide presentation. Thanks.

Matthew V. Masterson  
Legal Research Specialist to Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106



Voter Fraud Speech.doc

026424



09/26/2006

CPPA  
Voting Fraud-Voter Intimidation Remarks

Good afternoon, ladies and gentlemen. My name is Paul DeGregorio and I am the acting Chairman of the U.S. Election Assistance Commission. It is a pleasure to be a part of this conference and be offered a chance to briefly address you today. I would also like to extend my thanks to Michael Alvarez, Thad Hall and Susan Hyde for organizing this fantastic conference.

My remarks today will focus on Voter Fraud and Voter Intimidation and how HAVA and the EAC combat these issues.

The subject of voter fraud and intimidation is a highly contentious issue. Since the 2004 election there has been a lot of discourse and writing about what constitutes election fraud and intimidation and how prevalent each is in our society. While there are no clear numbers on the incidents of voter fraud and intimidation what is clear is that the American public is concerned about both issues and something needs to be done to combat them.

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 intimidation in elections for Federal office.

In September of 2005 the Commission hired consultants to begin a comprehensive study of election fraud and 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. We are eagerly awaiting the final report from the working group so that we can gain a better understanding of the form that voter fraud and intimidation is taking and what can be done to combat those practices.

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 ineligible voter as fraud. 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. 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 Voter 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.

This Voter Database will serve two purposes. First it helps to prevent voter 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. This would eliminate the problem of the use of dead person's names to vote, or the use of inmate's names to vote. Under HAVA state election officials are given the right to remove those names that have been checked against inmate lists and state agency records on death.

Second, the Voter Database will ease the burden on voters by allowing them to easily check their voting status and update their information when necessary. Therefore a person who moves within the state from one county to another can easily check their voting status i.e. what county they are registered in and update that information via a new registration if necessary.

Also according to HAVA section 303 State election officials are required to regularly update the Voter Database 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 crack down on fraud by eliminating ineligible

voters from registration lists, while easing the process for those voters who are eligible.

Another 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 May of 2005 the EAC contracted with an independent group of scholars to conduct a study on voter identification practices in the 2004 election and recommend some best practices for voter identification laws for upcoming elections. 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 most notably racial and ethnic minorities, the young, and elderly 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.

The first step that needs to be taken in order to find this balance is more research needs to be conducted on the issue of voter identification. As was noted by the EAC's 2005 study the amount of evidence available on how voter identification laws impacted both voter turnout and voter fraud is scant 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.

In sharp contrast to the Georgia decision was a case involving a challenge to Indiana's voter identification law. In this case a Federal District Court found no basis for the plaintiffs challenge to an Indiana statute requiring picture ID in order to vote in person. In its judgment the court held that the State of Indiana had a legitimate and important interest in protecting the integrity of its elections. The court explained further that any burden placed on voters to obtain ID was not unduly burdensome and was necessary in order to provide a fair and just election. The court saw no indication of bias or discrimination and felt the law to be necessary to achieve the states goal of a fair election.

These two cases are a perfect example of the struggle that legislatures, election officials, and courts are having with the issue of voter fraud and voter identification. Where some see fraud others do not, and where some see discrimination others do not.

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?

The EAC's 2005 study recognized these problems and in its best practices guidelines made several suggestions on how to deal with them:

First, as stated above the study suggested further research to clarify the connection the connection of the relationship requirements and the number of potential voters actually able to cast a ballot that is actually counted.

Second, the study suggested 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. This analysis will help to ensure that efforts to increase ballot security have a neutral effect on electoral participating by eligible voters.

Finally, starting with the 2006 election states should collect and report reliable, credible information on the relationship between ballot access and ballot security. In turn the EAC can use this data to publish an analysis of this information to provide sound factual data as a basis for the states to consider as they estimate the incidence of the kinds of vote fraud that stricter voter ID laws may prevent.

The problem of in person voter fraud is often debated. Many feel it is not a problem at all. While others, like the citizens of Arizona when they passed Proposition 200 a voter ID law requiring ID to both register and vote, feel it is a big enough problem to vote in favor of laws to prevent it. The only way to clear up this debate and provide real answers to our questions thorough clear analysis

of the issues without the ambiguity of terms or political biases that have corrupted this entire discussion.

In conclusion, the EAC is working on compiling data on voter fraud and intimidation to help aid states in their assessment of voter issues. With the release of EAC's working group on voter fraud final report the EAC will be better prepared to help states understand the extent of voter fraud and the next steps to be taken to combat it. While legitimate data still does not exist to combat these issues there are measures that states can take to counteract voter fraud. The first step is to follow the HAVA mandated requirement of forming a voter registration database. This will allow states to know who is and is not eligible to vote and will allow voters to easily access their registration status. Finally with the passage of more voter ID laws throughout the states it is important for state election officials to remain up to date on the holdings of the court cases involving these laws and the effect that these laws are having on voter turnout and voter fraud issues.

I thank you all for your time and patience. If should need any further information on the EAC, HAVA or other voting issues please feel free to check our web site at [www.eac.gov](http://www.eac.gov).

Thank you.



Amie J. Sherrill/EAC/GOV  
09/27/2006 11:58 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Voter Fraud Speech

Chairman:

Here is the latest version of the voter fraud speech. I have included all changes that you requested and added the comments about accomplishments. Please let me know what else you would like to add. Also I have printed up a hard copy if you would prefer to read that. Thank you for your patience.

Matthew V. Masterson  
Legal Research Specialist to Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106



Voter Fraud Speech #2.doc

026432



9/27/2006

**CPPA  
Voting Fraud-Voter Intimidation Remarks**

Good afternoon, ladies and gentlemen. My name is Paul DeGregorio and I am the Chairman of the U.S. Election Assistance Commission. It is a pleasure to be a part of this conference and be offered a chance to briefly address you today. I would also like to extend my thanks to Michael Alvarez, Thad Hall and Susan Hyde for organizing this conference.

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 is 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 is 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.

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 intimidation in elections for Federal office.

In September of 2005 the Commission hired consultants to begin a comprehensive study of election fraud and 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. We are eagerly awaiting the final report from the working group so that we can gain a better understanding of the form that voter fraud and intimidation is taking and what can be done to combat those practices.

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 ineligible voter as fraud. 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. 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. This would eliminate the problem of the use of a deceased person's name to vote. Under HAVA state election officials are given the right to remove those names that have been checked against state agency records on death.

Also according to HAVA section 303 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 May of 2005 the EAC contracted with an institution to conduct a study on voter identification practices in the 2004 election and recommend some best practices for voter identification laws for upcoming elections. 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 most notably racial and ethnic minorities, the young, and elderly 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 observing elections, especially in emerging democracies, I witnessed little if any resistance to ID requirements including photo ID requirements. In Haiti...

The first step that needs to be taken in order to find this balance is more research needs to be conducted on the issue of voter identification. As was noted by the EAC's 2005 study the amount of evidence available on how voter identification laws impacted both voter turnout and voter fraud is scant 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?

Recognizing this struggle the EAC's study on voter identification made suggestions on how to better understand the need for these laws and how best to implement them:

First, as stated above the study suggested further research to clarify the connection the connection of the relationship requirements and the number of potential voters actually able to cast a ballot that is actually counted.

Second, the study suggested 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. This analysis will help to ensure that efforts to increase ballot security have a neutral effect on electoral participating by eligible voters.

Finally, starting with the 2006 election states should collect and report reliable, credible information on the relationship between ballot access and ballot security. In turn the EAC can use this data to publish an analysis of this information to provide sound factual data as a basis for the states to consider as they estimate the incidence of the kinds of vote fraud that stricter voter ID laws may prevent.

Voter intimidation also has little valuable statistical information available. Again this is because “voter intimidation” is difficult to define and can rarely be prosecuted. Like voter fraud it is a widely held belief that most alleged incidents of voter intimidation continue to be focused on minority and underprivileged communities.

Many of the accusations of voter intimidation are brought against poll workers many 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 is 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.

Finally, I would like to take just a brief moment to discuss the immense accomplishments of the EAC since I became a commissioner in December of 2003:

First, we have distributed more than 3 Billion Dollars to states to improve their voting equipment and processes.

Also, the EAC delivered the HAVA mandated voluntary voting system guidelines (VVSG) within the 9 month deadline. We are currently working on future versions of the VVSG. In developing these future versions we are looking into the use of wireless technology in voting and testing future software and hardware that might be used in future elections.

We have issued guidance to states on statewide databases, accessibility and how to use HAVA funds. On a daily basis we answer questions and offer guidance every day for election officials all over the world.

In order to further support local election officials we recently released our quick start guide to help officials who are introducing new voting systems. This guide provides a snapshot of processes and procedures for local election administrators to use when implementing new voting systems. It includes tips on receiving and testing equipment, poll worker training, security, and Election Day operations.

In addition to the research project that we have begun regarding election fraud and intimidation we have several other research 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 and polling places, best practices for poll worker training, recruitment and retention and a study on vote count and recount procedures.

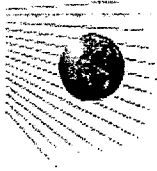
The HAVA College Poll Worker Program has awarded a total of almost \$1 Million in grants. Research is underway to find the best ways to recruit train and retain college poll workers.

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. Already in 2006 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, public access portals, and the EAC certification program.

In conclusion, the past four years have seen significant changes in the electoral process. New voting systems have been purchased, replacing the antiquated systems that had been in place for decades. As discussed earlier states should now have a single list of registered voters to better identify those who are eligible to vote, and provisional voting is now available throughout the nation. As these changes take place the EAC is working hard every day to smooth the transition from old to new and bring about a more efficient and fair electoral process for all Americans.

Thank You.





Paul DeGregorio /EAC/GOV

09/27/2006 05:08 PM

To Bryan Whitener/EAC/GOV

cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.

bcc

Subject Re: draft text for USA Today 

Bryan,

Do we need to make some mention that none of these reports are overdue? (since he thinks that they are based on what he read in electionline.org)?

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
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www.eac.gov

Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV

09/27/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

Subject draft text for USA Today

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026441

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.

###

Juliet E. Hodgkins/EAC/GOV  
09/27/2006 05:24 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc

Subject Re: draft text for USA Today 

I don't really know how to respond to his misconception without us sounding somewhat defensive. The reality is that the provisional voting guidance was due before we existed and that for all intents and purposes provisional voting was implemented prior to our existence. Thus, the deadline became irrelevant. So, how do we say that without sounding defensive?


The other study is one in a laundry list that has not specific date. So, we could say that, but, again, that seems to beg the question if we only talk about the voter fraud timeline and avoid the provisional voting timeline.

Isn't it better to just remain silent on that point?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
09/27/2006 05:08 PM

To Bryan Whitener/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: draft text for USA Today 

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pdegregorio@eac.gov  
www.eac.gov

026443

Bryan Whitener/EAC/GOV

**Bryan Whitener /EAC/GOV**

09/27/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
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###

026444

Bryan Whitener /EAC/GOV  
09/27/2006 05:41 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
bcc  
Subject Re: draft text for USA Today 

History:  This message has been replied to

Mr. Chairman,

I recommend that we not address the issue of deadlines in this particular response. I found the following information in the FY 03 and 04 annual reports. I've indicated the sections where provisional voting is referenced.

####

#### Fiscal Year 2004 Annual Report

At the same time, the delayed establishment of EAC and operating budget constraints restricted its ability to conduct some HAVA-mandated activities within the prescribed timeline. EAC was forced to postpone or limit the following work:...Issuance of HAVA Title III guidance on voting systems standards, statewide voter registration systems, provisional voting, voter education, and voters who register by mail;...

####

#### Fiscal Year 2003 Annual Report

HAVA required that EAC be established in February 2003, but the appointment of EAC Commissioners did not occur until December 13, 2003. While other federal agencies and the States carried out their responsibilities under HAVA, the delay in establishing EAC meant that certain HAVA mandated activities could not be completed in a timely fashion, including :

Guidance on the implementation of the uniform and nondiscriminatory election technology and administration requirements in HAVA Title III, including voting systems standards, computerized statewide voter registration lists, and information on provisional voting, voter education, and for voters who register by mail;

**Responsibilities of EAC** HAVA requires EAC to serve as a national clearinghouse and resource for the compilation of information and the review of procedures relevant to the administration of federal elections. The Act also requires the Commission to: ...Produce voluntary guidance on the implementation of HAVA Title III requirements (voting systems standards, computerized statewide voter registration lists, and public information on provisional voting, voter education, and for voters who register by mail).

#### Missed Deadlines Caused By The Delay In The Appointment Of EAC Commissioners

EAC has missed several HAVA deadlines, primarily because it was not established until mid-December 2003. EAC continues to be challenged to meet these deadlines due to FY04 budget constraints. Further, EAC's ability to make up for lost time in meeting these and its ability to meet other responsibilities is fully dependent on receiving the \$10 million that is requested in the President's budget submission for FY 2005. **Statutory Deadline Action Required by the EAC** October 1, 2003 Adopt recommendations and voluntary guidance on HAVA Section 302 requirements for provisional voting and voting information (HAVA Section 311(b)(2))

####

026445

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV

09/27/2006 05:08 PM

To Bryan Whitener/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

Subject Re: draft text for USA Today 

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Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV

09/27/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

Subject draft text for USA Today

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026446

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###



**Paul DeGregorio /EAC/GOV**  
09/27/2006 05:47 PM

To Bryan Whitener/EAC/GOV  
cc  
bcc  
Subject Re: draft text for USA Today

OK. Go with what you send earlier.

Paul DeGregorio  
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Bryan Whitener/EAC/GOV

**Bryan Whitener /EAC/GOV**  
09/27/2006 05:41 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
Subject Re: draft text for USA Today

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**Fiscal Year 2004 Annual Report**

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**Fiscal Year 2003 Annual Report**

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026448



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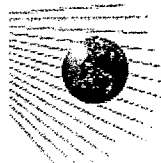
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Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV

09/27/2006 05:08 PM

To Bryan Whitener/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

Subject Re: draft text for USA Today

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026449

Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV

09/27/2006 04:39 PM

To Paul DeGregorio/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
Subject draft text for USA Today

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###

026450




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

bcc

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

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###

026451

Jeannie Layson /EAC/GOV  
10/05/2006 03:51 PM

To pdegregorio@eac.gov  
cc  
bcc  
Subject Fw: Board agenda docs

Mr. Chairman,

Below is the info that was sent to Rich last week. He asked about the status of our vote fraud and voter intimidation study. Peg and Edgardo presented an update on the project at the May public meeting, and the attached reports were presented to the St. Bd. and the BoA, making them public documents. Sec. 241 requires us to study both topics, and the BoA requested that we make this a research priority. Basically, your speech outlines what has been identified so far -- that there is little solid evidence on both of these topics, and even the definition of these terms varies widely. Our consultants basically conclude that more research needs to be done, and that it will involve a combination of examining local laws, enforcement activities as well as the implementation of the new statewide voter reg. lists.

----- Forwarded by Bryan Whitener/EAC/GOV on 10/05/2006 03:46 PM -----

**Bryan Whitener/EAC/GOV**

09/27/2006 05:56 PM

To rwolf [REDACTED]  
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)

026452

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



### VF-VI Study Status 5-17-06.pdf PV-Standard Board 5-12-06.pdf



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

**026454**

## 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.

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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

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.

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*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**

**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.

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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 protected 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 fall 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.

<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

<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 (B) (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 (UNA)

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>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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## 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 3**  
**CATEGORIZATION OF STATES -- Ballot Evaluation Methods**

Signature Match	Data Match	Affidavit	Return with ID	NA
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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### 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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### 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.



"Eric Fischer"

~~XXXXXXXXXXXXXXXXXXXX~~  
10/08/2006 11:00 PM

To pdegregorio@eac.gov

cc

bcc

Subject Re: Request for input on new CRS survey

Dear Paul: It was a delight to see you last week, and very informative as well. I'm only sorry we didn't have more time to talk. Thank you for your excellent points and for taking the time to respond. We do plan to explore at least several of the points you raise, and your comments should help us focus the questions nicely. Of course, we face the dilemma that if we ask all the questions we think would be useful, the questionnaire will be too long and response rates will go down. So we are going to have to make some hard choices. I am forwarding your email immediately to my colleagues so we can discuss it this week, since A&M will be sending us the first draft of the questionnaire on Friday. Speaking on the 2nd day of the conference, I found that much of what I had originally planned to say was already covered by others. A few points some folks seemed to find interesting:

1. There's not been much talk about what kinds of fraud might be perpetrated using voter ID (we all seem to think it will only reduce the risk of fraud, but as you know, any system has its own vulnerabilities, and the bad guys will try to exploit them).
2. Since the voter ID and regn debates seem to be heavily colored by partisan wrangling, it might be useful to try to change the question. For example, rather than posing the registration problem as a dilemma with access and integrity the two horns, it might be helpful to think about it as something like "What level of uncertainty regarding eligibility is acceptable in a decision whether to add a voter to or keep a voter on a registration list?" Of course, there are probably better ways to phrase it...
3. There is a lot of focus on registration as a database problem, with the risk that technology is being overemphasized and the two other main dimensions--people and process--are not getting enough attention. For example, it could be very productive to focus more on the usability--for voters, pollworkers, and administrators--of voter registration systems.
4. If we adopt universal voter identification, do we really need voter registration?
5. It might be useful if process engineers were to look at the entire election cycle to determine how it can be improved. It seems to me, as both policy analyst and pollworker, that it is overly complex, and that actually increases the risk of failure and mischief. Similar concerns have long been raised about the healthcare industry, often only to fall on deaf ears, although that seems to be changing at last, to good effect.
6. There is now a core group of preeminent researchers in election administration, and forward-thinking, preeminent election administrators who understand the importance of research. It might therefore be useful to consider the possibility of a consortium of interested members the two groups to identify research needs (including such basics as what data should be collected and how) and working together to do the studies. If I were in academia, I'd certainly be exploring that.

So there you have it!

I hope to see you again soon, and thanks again for your help.

-Eric

026499

>>> <pdegregorio@eac.gov> 10/08/06 4:06 PM >>>  
Eric,

Good to see you in Boston. Sorry I couldn't say for your session, but I did read what you submitted.

I looked over your topics. I also did a quick glance of your post-2004 survey. While you list your topics and make reference to your 2004 survey, I could not tell from your topics whether you are going to ask most of the same questions from your previous survey. Some of them would certainly be worth repeating to detect trends.

Since only 17% indicated in your last survey that they had replaced equipment (while 40% said they had planned to), I wonder if that question needs to be further defined since all jurisdictions have to have devices that allow HAVA 301a compliance (disability privacy and independence). Perhaps you can ask if they replaced equipment or if they kept their equipment and added a voting device for people with disabilities at each polling place.

Also, it may be helpful to know if the LEO receives adequate funding from local, state and the federal government for their operations (on some kind of 1-5 scale). I don't know how deeply you want to get into poll worker pay or training but finding out the mean pay of poll workers and the mean number of hours they are trained could be helpful.

While 81% of LEOs reported in your last survey that they were adequately trained as an election official, I wonder how many feel mandatory state LEO training or certification should be required. Should it be tied to pay increases for LEOs?

What about questions on how they are served by the media? Does the media do an adequate job in providing correct information to the voters?

Do they believe the federal government should set higher standards for voting equipment or are the present standards adequate?

Do you plan to ask a question again this year on the adequacy of the service they are provided by vendors?

There was very little mention of fraud in your last survey and I don't see it listed as a topic, which I know has been a concern to many members of Congress (especially in the passage by the House of the ID law). Do you plan to ask any questions on that topic? It would be interesting to know

026500

if LEOs uncovered any fraud in their jurisdiction, what type of fraud (registration, petition, absentee, voting, vote-buying), whether they referred it to local or federal prosecutors and whether the prosecutors did anything about it. When it comes to fraud, many LEOs complain to me that they see (especially with bogus registrations and on petitions) it but local prosecutors do not prosecute it.

I know I have made quite a few suggestions and that this survey is probably more limited than what you did in 2004.

Hope this helps.

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

"Eric Fischer" <[REDACTED]>  
10/02/2006 12:33 PM

To  
pdegregorio@eac.gov  
cc

Subject  
Request for input on new CRS survey

Dear Paul:

I am writing to ask for your help in preparing a list of survey questions.

The purpose of the survey is to help the 110th Congress as it considers further action in election reform, especially, for what issues is it most important that Congress know the perspectives of local election officials?

Below is a draft list of topics that we are considering. It would be very helpful if you could let me know if there are any additional topics

we should consider for the survey, or if any of those on the current list do not seem relevant to you. Please keep in mind that we are interested

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in the perspectives of election officials, not details about how they administer elections (other surveys cover those matters). Also, the survey focuses on election administration, not other election issues such as redistricting or campaign finance.

I will greatly appreciate any feedback you can give us, and it will be most helpful if you can respond by Monday, October 9.

Here are the topics:

Background Information

- General Information on Respondent
- Training and Experience of Respondent
- Voting Systems Used in Jurisdiction

The Help America Vote Act (HAVA)

- Voting Accessibility
- Voter Registration Database
- Voter ID
- Provisional Ballots
- Funding
- Election Assistance Commission
- Other Major Provisions
- Implementation and Compliance Issues

Computer-Assisted Voting

- DREs versus Optical Scan
- Security Issues
- Usability Issues
- Paper Trail and Audits


Conducting Elections

- Effects of HAVA on Voters, Poll Workers, and

Administrators

- Poll Worker Recruitment and Training
- Back-up and Contingency Plans
- Partisanship and Election Administration

In case you have not seen it, I have attached a copy of our CRS report from the 2004 survey. This year, we are once again working with the Bush School at Texas A&M University to do the survey. Here is link to a paper by them that includes details on the questions and responses from 2004:

/academics/mpsa/capstone/projects/VotingSystemsReport.pdf

I look forward to hearing from you.

Sincerely,

Eric A. Fischer, PhD  
Senior Specialist, Science and Technology  
Congressional Research Service  
Library of Congress  
101 Independence Ave. SE  
Washington, DC 20540-7450

ph:   
f:   
 deleted by Paul

026502

DeGregorio/EAC/GOV]

026503



"Cameron Quinn"  
<cquinn@sprintmail.com>  
05/15/2004 03:42 PM

To "Craig Burkhardt" [REDACTED], "Mike  
McSherry" [REDACTED], "Michael Thielen"  
<thielen@[REDACTED]>, "Paul DeGregorio - EAC"  
cc

bcc Paul DeGregorio/EAC/GOV

Subject Fw: votingtech Voting Fraud Expose about to Explode

History: This message has been forwarded

fyi - had saved this - might come up this fall. cpq

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

Sent: Thursday, July 03, 2003 12:13 AM

Subject: FW: votingtech Voting Fraud Expose about to Explode

> FYI, the message below was posted today to the Votingtech list. I refrain  
> from comment.

>

> -----Original Message-----

> From: Dennis Paull [REDACTED]

> Sent: Wednesday, July 02, 2003 3:53 PM

> To: votingtech@hss.caltech.edu

> Subject: votingtech Voting Fraud Expose about to Explode

>

>

> Hi all,

>

> Please excuse if this is old hat to you.

>

> I assume that you have been following the Bev Harris investigation.

> Now, it seems, she has found the smoking gun. Interestingly, she

> claims that code hacking affects not just DREs but optical scan

> equipment from years back.

>

> Bev has been investigating the possibilities of vote counting fraud

> since after the Nov 2000 election. She and her friends have been

> searching for evidence that massive fraud existed and that the current

> Republican control of Congress, as well as Bush's election, was cooked.

>

> Bev is saying that she has now discovered such evidence and is about to

> make it public. As you might imagine, this has a few folks riled up.

>

> If she follows through as she states, this would be the biggest story

> since WaterGate and maybe since 1776. It is definitely worth following.

>

> As a start, you might scan the thread of messages on this topic on the

> DemocraticUnderground forum. It is not easy to follow, but you will

> get a sense of how others are reacting to these events.

>

> [REDACTED]

>

> The bomb, and the spinmeisters' responses, could come within a week,

> even by tomorrow. The final strategy as to how to get the maximum effect

> is not yet disclosed. There are some high powered people ready to make

> as much of this as can be imagined, so stay tuned.

>

> Bev's web site is:

026504



>

>

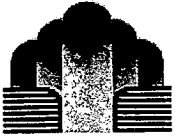
>

> and was not up to date as of a day or so ago. I expect it will become  
> the focal point as soon as she goes fully public. If you can't find it,  
> suspect that someone has gotten to her ISP. The information is being  
> spread widely around the internet including outside the country, so it  
> will be VERY hard to keep it off of your screen and out of the papers.

>

> Dennis Paull

026505



DeForest Soaries  
Jr./EAC/GOV  
05/17/2004 11:51 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: e-mail from July 03

I agree completely.

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio

**From:** Paul DeGregorio  
**Sent:** 05/17/2004 09:21 AM  
**To:** DeForest Soaries Jr.  
**Subject:** e-mail from July 03

Buster,

I don't know if you ever saw the e-mail that follows below. It was sent around last summer, and, because I am on so many lists, I got a copy. I think it will show you some of the partisan push that is driving some of this debate on DRE's and security. These people actually believe that it was massive fraud that put Bush and the GOP congress in place. This is utter nonsense and we have to be careful not to be a party to promoting the cause of those who continue to promote this train of thought. I know the EAC has taken great steps and you have shown great leadership to deal with this issue in a responsible manner. Getting Drs. Rubin and Williams together was that kind of leadership. Having the May 5 hearing was another. I know that we are likely to see an increase in conspiracy theories in the coming months. It will be a challenge for all of us.

Paul

>  
> -----Original Message-----  
> From: Dennis Paull [mailto: ]  
> Sent: Wednesday, July 02, 2003 3:53 PM  
> To: votingtech@hss.caltech.edu  
> Subject: votingtech Voting Fraud Expose about to Explode  
>  
>  
> Hi all,  
>  
> Please excuse if this is old hat to you.  
>  
> I assume that you have been following the Bev Harris investigation.  
> Now, it seems, she has found the smoking gun. Interestingly, she  
> claims that code hacking affects not just DREs but optical scan  
> equipment from years back.  
>  
> Bev has been investigating the possibilities of vote counting fraud  
> since after the Nov 2000 election. She and her friends have been  
> searching for evidence that massive fraud existed and that the current  
> Republican control of Congress, as well as Bush's election, was cooked.  
>  
> Bev is saying that she has now discovered such evidence and is about to  
> make it public. As you might imagine, this has a few folks riled up.

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>  
> If she follows through as she states, this would be the biggest story  
> since WaterGate and maybe since 1776. It is definitely worth following.  
>  
> As a start, you might scan the thread of messages on this topic on the  
> DemocraticUnderground forum. It is not easy to follow, but you will  
> get a sense of how others are reacting to these events.  
>  
> [REDACTED]  
>  
> The bomb, and the spinmeisters' responses, could come within a week,  
> even by tomorrow. The final strategy as to how to get the maximum effect  
> is not yet disclosed. There are some high powered people ready to make  
> as much of this as can be imagined, so stay tuned.  
>  
> Bev's web site is:  
>  
> [REDACTED]  
>  
> and was not up to date as of a day or so ago. I expect it will become  
> the focal point as soon as she goes fully public. If you can't find it,  
> suspect that someone has gotten to her ISP. The information is being  
> spread widely around the internet including outside the country, so it  
> will be VERY hard to keep it off of your screen and out of the papers.  
>  
> Dennis Paull



Gracia Hillman /EAC/GOV  
07/13/2004 08:21 AM

To Diane Savoy/EAC/GOV@EAC  
cc DeForest Soaries Jr./EAC/GOV@EAC, "Paul DeGregorio"  
<pdegregorio@eac.gov>, "Ray Martinez"  
<rmartinez@eac.gov>  
bcc

Subject Re: Public Meeting Agenda

History: This message has been replied to.

I know we aren't prepared to give a report of our June hearing but I think it has to be mentioned at some point during the meeting. Having a report of the May hearing but not the June hearing seems to beg the question.

-----  
Sent from my BlackBerry Wireless Handheld  
Diane Savoy

**From:** Diane Savoy  
**Sent:** 07/13/2004 08:06 AM  
**To:** DeForest Soaries Jr.; Gracia Hillman; Raymundo Martinez; Paul DeGregorio  
**Subject:** Public Meeting Agenda

Below is the current agenda. Any comments?

**Call to Order**

**Pledge of Allegiance**

**Roll Call**

**Adoption of Agenda**

**Remarks by Commissioners**

**Updates and Reports**

- EAC Administration
- Title 2 Requirements Payments
- Report on May 5, 2004 Public Hearing
- Standards Board and Board of Advisors
- Technical Guidelines Development Committee
- College Program

**Recommendations**

- Grant to Student Mock Organization
- Best Practices
- Public Hearing on Poll Workers/September 13, 2004
- November Election Research Project

- Electronic Voting Security Policy
- Public Meeting Schedule

**Presentations**

- Approach to Election Fraud - Department of Justice, Election Crimes Branch
- National Software Reference Library - National Institute of Standards and Technology

**Adjournment**

L. Diane Savoy  
Consulting Chief of Staff  
U.S. Election Assistance Commission

e-mail: [dsavoy@eac.gov](mailto:dsavoy@eac.gov)  
phone: 202-566-3100  
fax: 202-566-3127



DeForest Soaries  
Jr./EAC/GOV

07/22/2004 09:27 AM

To Raymundo Martinez/EAC/GOV, "Gracia Hillman"  
<ghillman@eac.gov>, "Paul DeGregorio"  
<pdegregorio@eac.gov>  
cc John C. Vergelli/EAC/GOV, "Diane Savoy"  
<Dsavoy@eac.gov>

bcc

Subject DOJ

I spoke to the Ass't US attorneys Tuesday at their training conference. I was asked to describe EAC mission and address the areas of mutual interest between DOJ and EAC. I talked for 25 minutes about voting rights, voter fraud, voter intimidation and voting systems security. If the speech was recorded, I will provide a transcript.

-----  
Sent from my BlackBerry Wireless Handheld

026510



DeForest Soaries  
Jr./EAC/GOV  
09/17/2004 04:46 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: John Fund article

Interesting.

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio

**From:** Paul DeGregorio  
**Sent:** 09/17/2004 04:31 PM  
**To:** DeForest Soaries Jr.  
**Subject:** John Fund article

I'm going to buy his book this weekend.

September 13, 2004, 6:33 a.m.

## Democracy Imperiled

America's election problems.

By John Fund

**EDITOR'S NOTE:** This is the introduction of John Fund's new book, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, released today from Encounter Books.

Our nation may be on the brink of repeating the 2000 Florida election debacle, but this time in several states, with allegations of voter fraud, intimidation and manipulation of voting machines added to the generalized chaos that sent our last presidential contest into overtime. There is still time to reduce the chance of another electoral meltdown, both this year and in future years. But this will not happen unless we acknowledge that the United States has a haphazard, fraud-prone election system befitting an emerging Third World country rather than the world's leading democracy.

With its hanging chads, butterfly ballots and Supreme Court intervention, the Florida fiasco compelled this country to confront an ugly reality: that we have been making do with what noted political scientist Walter Dean Burnham has called "the modern world's sloppiest electoral systems." How sloppy? Lethally so. At least eight of the nineteen hijackers who attacked the World Trade Center and the Pentagon were actually able to register to

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vote in either Virginia or Florida while they made their deadly preparations for 9/11.

The 2000 recount was more than merely a national embarrassment; it left a lasting scar on the American electoral psyche. A recent Zogby poll found that 38 percent of Americans still regard the 2000 election outcome as questionable. Many Republicans believe that Democratic judges on the Florida Supreme Court tried to hand their state to Al Gore based on selective partisan recounts and the illegal votes of felons and aliens. Many Democrats feel that the justices of the U.S. Supreme Court tilted toward Bush, and they refuse to accept his victory as valid. But this issue transcends "red state" vs. "blue state" partisan grievances. Many Americans are convinced that politicians can't be trusted to play by the rules and will either commit fraud or intimidate voters at the slightest opportunity.

Indeed, the level of suspicion has grown so dramatically that it threatens to undermine our political system. Nearly 10 percent of Americans believe their votes are not counted accurately, and almost as many worry that this is the case, according to a July 2004 poll by John Zogby. A Rasmussen Research poll in June found that 44 percent of Americans were either very or somewhat worried that a Florida-style mess could happen again in 2004. This growing cynicism diminishes respect for the nation's institutions and lowers voter participation. Only 11 percent of the 18- to 19-year-olds eligible to vote for the first time now bother to go to the polls. The United States ranks 139th out of 163 democracies in the rate of voter participation. The more that voting is left to the zealous or self-interested few, the more we see harshly personal campaigns that dispense with any positive vision of our national future. "If this escalates, we're in horrendous shape as a country," says Curtis Gans, who runs the Committee for the Study of the American Electorate. "If election results are followed by lawsuits, appeals, fire and counterfire, many people who are already saying to hell with the process are going to exit."

The 2000 election resulted in some modest reforms, such as the federal Help America Vote Act, but the implementation has been so slow. Only \$670 million of the promised \$3.9 billion in grants to upgrade technology, cull voter rolls and enhance training had been dispersed to the states as of May 2004. This means that the nation's voting systems will be in no better shape this November than they were in 2000, when about 2 percent of all votes for



president nationwide weren't counted for one reason or another, the vast majority because of voter error or outdated machines.

America's election problems go beyond the strapped budgets of many local election offices. More insidious are flawed voter rolls, voter ignorance, lackadaisical law enforcement and a shortage of trained volunteers. All this adds up to an open invitation for errors, miscounts or fraud.

Reform is easy to talk about, but difficult to bring about. Many of the suggested improvements, such as requiring voters to show ID at the polls, are bitterly opposed. For instance, Maria Cardona, spokeswoman for the Democratic National Committee, claims that "ballot security and preventing voter fraud are just code words for voter intimidation and suppression." Even improved technology is controversial. This November, around fifty million Americans will be using electronic voting machines similar to ATM machines, and some computer scientists are alarmed by the possibility that hackers could change the software to cast multiple votes or do other kinds of mischief. Both Democratic senator Hillary Clinton and GOP representative Steve King of Iowa are backing separate pieces of legislation to require that machines issue paper receipts for voters to verify before casting their ballots. But the legislation hasn't even had a hearing and only Nevada will have paper receipts in place by the fall 2004 election.

Confusion and claims of fraud are likely this time around, especially if the election is as close as it was in 2000. Can the nation take another Florida-style controversy?

Indeed, we may be on the way to turning Election Day into Election Month through a new legal quagmire: election by litigation. Every close race now carries with it the prospect of demands for recounts, lawsuits and seating challenges in Congress. "We're waiting for the day that pols can just cut out the middleman and settle all elections in court," jokes Chuck Todd, editor of the political tip sheet *Hotline*. Such gallows humor may be entirely appropriate given the predicament we face. The 2000 election may have marked a permanent change in how elections can be decided, much as the battle over the Supreme Court nomination of Robert Bork changed, apparently forever, the politics of judicial appointments. On April 19, 2004, John Kerry campaigned in Florida with Senator Joe Lieberman, the 2000 Democratic vice presidential candidate, and vowed — six months

before a single ballot was cast, counted or disputed — that he was ready to take the 2004 election to court. "We are going to bring legal challenge to those districts that make it difficult for people to register. We're going to bring challenge to those people that disenroll people," he told a rally. "And we're going to challenge any place in America where you cannot trace the vote and count the votes of Americans. Period!" Democrats plan to have over ten thousand lawyers on the ground in all states this November, ready for action if the election is close and they see a way to contest it. "If you think of election problems as akin to forest fires, the woods are no drier than they were in 2000, but many more people have matches," says Doug Chapin of Electionline.org, an Internet clearinghouse of election news. If the trend toward litigation continues, winners in the future may have to hope not only that they win but that their margins are beyond "the margin of litigation."

Some of the sloppiness that makes fraud and foul-ups in election counts possible seems to be built into the system by design. The "Motor Voter Law," the first piece of legislation signed into law by President Clinton upon entering office, imposed fraud-friendly rules on the states by requiring driver's license bureaus to register anyone applying for licenses, to offer mail-in registration with no identification needed, and to forbid government workers to challenge new registrants, while making it difficult to purge "deadwood" voters (those who have died or moved away). In 2001, the voter rolls in many American cities included more names than the U.S. Census listed as the total number of residents over age eighteen. Philadelphia's voter rolls, for instance, have jumped 24 percent since 1995 at the same time that the city's population has declined by 13 percent. CBS's *60 Minutes* created a stir in 1999 when it found people in California using mail-in forms to register fictitious people, or pets, and then obtaining absentee ballots in their names. By this means, for example, the illegal alien who assassinated the Mexican presidential candidate Luis Donaldo Colosio was registered to vote in San Pedro, California — twice.

Ironically, Mexico and many other countries have election systems that are far more secure than ours. To obtain voter credentials, the citizen must present a photo, write a signature and give a thumbprint. The voter card includes a picture with a hologram covering it, a magnetic strip and a serial number to guard against tampering. To cast a ballot, voters must present the card and be certified by a thumbprint scanner. This system was

instrumental in allowing the 2000 election of Vicente Fox, the first opposition party candidate to be elected president in seventy years.

But in the United States, at a time of heightened security and mundane rules that require citizens to show ID to travel and even rent a video, only seventeen states require some form of documentation in order to vote. "Why should the important process of voting be the one exception to this rule?" asks Karen Saranita, a former fraud investigator for a Democratic state senator in California. Americans agree. A Rasmussen poll finds that 82 percent of Americans, including 75 percent of Democrats, believe that "people should be required to show a driver's license or some other form of photo ID before they are allowed to vote."

The reason for such support is that citizens instinctively realize that some people will be tempted to cut corners in the cutthroat world of politics. "Some of the world's most clever people are attracted to politics, because that's where the power is," says University of Virginia political scientist Larry Sabato. "So they're always going to be one step ahead of the law."

Election fraud, whether it's 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 red state/blue state divisions that have polarized the country and created so many close elections lately. Although most fraud is found in urban areas, there are current scandals in rural South Dakota and Texas. In recent years, Baltimore, Philadelphia, New Orleans and Milwaukee have all had election-related scandals. Wisconsin officials convicted a New York heiress working for Al Gore of giving homeless people cigarettes if they rode in a van to the polls and voted. The *Miami Herald* won a Pulitzer Prize in 1999 for uncovering how "vote brokers" employed by candidate Xavier Suarez stole a mayoral election by tampering with 4,740 absentee ballots. Many were cast by homeless people who didn't live in the city and were paid \$10 apiece and shuttled to the elections office in vans. All of the absentee ballots were thrown out by a court four months later and Mr. Suarez's opponent was installed as mayor.

But such interventions are rare, even when fraud is proven. In 1997, the House of Representatives voted along partisan lines to demand that the Justice Department prosecute Hermandad

Mexicana Nacional, a group that investigators for the House Administration Committee say registered hundreds of illegal voters in a razor-thin congressional race in Orange County, California. But federal immigration officials refused to cooperate with the probe, citing "privacy" concerns, and nothing was done beyond yanking a federal contract that paid Hermandad to conduct citizenship classes. The same year, a U.S. Senate probe into fraud in a Senate race in Louisiana found more than 1,500 cases in which two voters used the same Social Security number. But further investigations collapsed after Democratic senators walked off the probe, calling it unfair, and then Attorney General Janet Reno removed FBI agents from the case because the probe wasn't "bipartisan."

A note about partisanship: Since Democrats figure prominently in the vast majority of examples of election fraud described in *Stealing Elections*, some readers will jump to the conclusion that this is a one-sided attack on a single party. I do not believe Republicans are inherently more virtuous or honest than anyone else in politics, and I myself often vote Libertarian or independent. Voter fraud occurs in both Republican strongholds such as Kentucky hollows and Democratic bastions such as New Orleans. When Republicans operated political machines such as Philadelphia's Meehan dynasty up until 1951 or the patronage mill of Nassau County, New York, until the 1990s, they were fully capable of bending — and breaking — the rules. Earl Mazo, the journalist who exhaustively documented the election fraud in Richard Daley's Chicago that may have handed Illinois to John F. Kennedy in the photo-finish 1960 election, says there was also "definitely fraud" in downstate Republican counties "but they didn't have the votes to counterbalance Chicago."

While they have not had the control of local and administrative offices necessary to tilt the rules improperly in their favor, Republicans have at times been guilty of intimidation tactics designed to discourage voting. In the 1980s, the Republican National Committee hired off-duty policemen to monitor polling places in New Jersey and Louisiana in the neighborhoods of minority voters, until the outcry forced them to sign a consent decree forswearing all such "ballot security" programs in the future.

In their book *Dirty Little Secrets*, Larry Sabato and co-author Glenn Simpson of the *Wall Street Journal* noted another factor in why Republican election fraud is less common. Republican base

voters are middle-class and not easily induced to commit fraud, while "the pool of people who appear to be available and more vulnerable to an invitation to participate in vote fraud tend to lean Democratic." Some liberal activists that Sabato and Simpson interviewed even partly justified fraudulent electoral behavior on the grounds that because the poor and dispossessed have so little political clout, "extraordinary measures (for example, stretching the absentee ballot or registration rules) are required to compensate." Paul Herrison, director of the Center for American Politics at the University of Maryland, agrees that "most incidents of wide-scale voter fraud reportedly occur in inner cities, which are largely populated by minority groups."

Democrats are far more skilled at encouraging poor people — who need money — to participate in shady vote-buying schemes. "I had no choice. I was hungry that day," Thomas Felder told the *Miami Herald* in explaining why he illegally voted in a mayoral election. "You wanted the money, you were told who to vote for." Sometimes it's not just food that vote stealers are hungry for. A former Democratic congressman gave me this explanation of why voting irregularities more often crop up in his party's back yard: "When many Republicans lose an election, they go back into what they call the private sector. When many Democrats lose an election, they lose power and money. They need to eat, and people will do an awful lot in order to eat."

Investigations of voter fraud are inherently political; and because they often involve race, they are often not zealously pursued or prosecuted. Attorney General John Ashcroft did launch a Voter Integrity Program in 2002, which dramatically reduced both Republican allegations of fraud and Democratic complaints of suppressed minority votes. But many federal and state prosecutors remain leery of tackling fraud or intimidation. After extensive research, I can report that while voting irregularities are common, the number of people who have spent time in jail as a result of a conviction for voter fraud in the last dozen years can be counted on the fingers of one hand.

The U.S. attorney for northern Louisiana, Donald Washington, admits that "most of the time, we can't do much of anything [about ballot-box improprieties] until the election is over. And the closer we get to the election, the less willing we are to get involved because of just the appearance of impropriety, just the appearance of the federal government somehow shading how this election ought to occur." Several prosecutors told me they fear

charges of racism or of a return to Jim Crow voter suppression tactics if they pursue touchy fraud cases. Wade Henderson of the Leadership Conference on Civil Rights calls efforts to fight election fraud "a solution in search of a problem" and "a warmed-over plan for voter intimidation."

But when voters are disfranchised by the counting of improperly cast ballots or outright fraud, their civil rights are violated just as surely as if they were prevented from voting. The integrity of the ballot box is just as important to the credibility of elections as access to it. Voting irregularities have a long pedigree in America, stretching back to the founding of the nation — though most people thought the "bad old days" had ended in 1948 after pistol-packing Texas sheriffs helped stuff Ballot Box 13, stealing a U.S. Senate seat and setting Lyndon Johnson on his road to the White House. Then came the 2004 primary election, when Representative Ciro Rodriguez, a Democrat, charged that during a recount, a missing ballot box appeared in south Texas with enough votes to make his opponent the Democratic nominee by 58 votes.

Political bosses such as Richard Daley or George Wallace may have died, but they have successors. A one-party machine in Hawaii intimidates critics and journalists who question its vote harvesting among noncitizens. In 1998, a former Democratic congressman named Austin Murphy was convicted in Pennsylvania of absentee ballot fraud. The Democratic county supervisor who uncovered this scandal, Sean Cavanaugh, was so ostracized by his party that he re-registered as an independent.

Even after Florida 2000, the media tend to downplay or ignore stories of election incompetence, manipulation or theft. Allowing such abuses to vanish into an informational black hole in effect legitimates them. The refusal to insist on simple procedural changes, such as requiring a photo ID at the polls, combined with secure technology and more vigorous prosecutions accelerates our drift toward banana-republic elections.

In 2002, Miami election officials hired the Center for Democracy, which normally observes voting in places like Guatemala or Albania, to send twenty election monitors to south Florida. In 2004, there will be even more observers on the ground. Scrutinizing our own elections the way we have traditionally scrutinized voting in developing countries is, unfortunately, a step in the right direction. But before we can get the clearer laws and

better protections we need to deal with fraud and voter mishaps,  
we have to get a sense of the magnitude of the problem we face.

<http://www.irs.gov/efile/efilecomment/fund200409130633.asp>

Juliet E. Thompson/EAC/GOV

02/04/2005 05:05 PM

To Paul DeGregorio/EAC/GOV@EAC

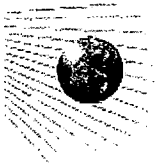
cc

bcc

Subject Re: Panelists for Feb. 23 

I am sure that we can accomodate Mr. Lott's schedule needs. Do you have a contact number for him? Or should I just send a letter of invitation?

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



Paul DeGregorio /EAC/GOV

02/02/2005 04:34 PM

To Juliet E. Thompson/EAC/GOV, Raymundo  
Martinez/EAC/GOV, Adam Ambrogi/EAC/GOV

cc

Subject Panelists for Feb. 23

I have spoken to John Lott of the American Enterprise Institute regarding folks who might be available to testify on provisional balloting at our Feb. 23rd hearing. Lott said that he is available to testify so long as we can get him on a plane to Philly by 4 PM (his son is graduating from scouts that night). Lott testimony is likely to cite laws/data which support the narrow approach to provisional voting. He would also probably talk about problems with fraud and provisional voting.

Lott recommended that we contact Bob Williams, who is President and senior research analyst with the Evergreen Freedom Foundation, a conservative think tank based in Seattle that has studied voting issues and made recommendations to the state legislature. Williams has done a lot of work on provisional voting and is just completing a survey from all the counties in Washington State on provisional voting regarding the Nov. 2004 election. He can cite statistics that show the inconsistency in one state when rules/procedures on provisional voting are not applied equally in every county (in Washington State the counting rate for provisionals ranged from 44% to 94%). Williams, who's testimony would probably fit better on the NGO panel, can be contacted at 360-956-3482. His web site is: <http://www.effwa.org/>

Lott said that Yoo of Berkeley was good but he did not know him to be an expert on provisional voting.

I'm waiting to hear back from another person on some other possibilities to consider for the academic panel.

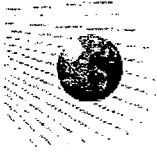
As to the election officials panel, My preference for the 3 State/SOS positions would be Blackwell, Vigil-Giron, Hood, and then Cortes (in that order; I realize we are likely to only have 3 from this group but assume someone may decline); my preference for local would be: Clark (D) and Blevins (R), they could both talk about their experiences with provisional voting at the local level. I don't know Vu or Damschroeder but I there are liberal blogs that believe Damschroeder stole the election in Ohio (not based on provisional voting but on faulty voting machines). If we want another calm-speaking westerner then Helen Purcell might work (although she might be tired of traveling).

Paul DeGregorio

026520



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202-566-3100  
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pdegregorio@eac.gov  
www.eac.gov



**Paul DeGregorio /EAC/GOV**  
02/07/2005 05:49 PM

To Juliet E. Thompson/EAC/GOV  
cc  
bcc

Subject Re: First Choice Panelists for Provisional Voting Hearing

You should ask John Fund testify. I did not discuss his participation at the Feb. 23rd hearing because at the time he was not on the initial list we had agreed to. Thanks.

Juliet E. Thompson/EAC/GOV

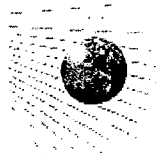
**Juliet E.  
Thompson/EAC/GOV**  
02/07/2005 04:54 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc

Subject Re: First Choice Panelists for Provisional Voting Hearing

I called and left a message for John Fund. Is your conversation with John Lott sufficient or do we need to follow up with another phone call?

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



**Paul DeGregorio /EAC/GOV**  
02/07/2005 02:55 PM

To Juliet E. Thompson/EAC/GOV  
cc

Subject Re: First Choice Panelists for Provisional Voting Hearing

I sat next to him at lunch today at NASS and failed to get his card. You can reach him at the Wall Street Journal at 212 416-2500.

Juliet E. Thompson/EAC/GOV

**Juliet E.  
Thompson/EAC/GOV**  
02/07/2005 02:47 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc

Subject Re: First Choice Panelists for Provisional Voting Hearing

I will be happy to call him. He was the original panelist. Do you have the number?

026522

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




Paul DeGregorio /EAC/GOV

02/07/2005 02:34 PM

To Juliet E. Thompson/EAC/GOV

cc

Subject Re: First Choice Panelists for Provisional Voting Hearing 

Julie,  
Bob Williams cannot make the Feb. 23 hearing due to some meeting. What about John Fund of the WSJ?  
Paul

Juliet E. Thompson/EAC/GOV

Juliet E. Thompson/EAC/GOV

02/04/2005 02:20 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, DeForest Soaries  
Jr./EAC/GOV@EAC

cc

Subject First Choice Panelists for Provisional Voting Hearing

According to your comments, the following are the first choices for panelists at the Provisional Voting Hearing. We are attempting to find one more academic who would represent a middle ground position since the likelihood of Eagleton or any other contractor being on board and prepared for that hearing is not strong. I will begin making calls to invite these persons today. Some will be attending functions this weekend wherein I will offer an in-person invitation.

### **Provisional Voting Presentations (Introductions by Chair Hillman)**

#### **Panel 1: Election Officials**

Secretary Kenneth Blackwell, Ohio  
Secretary Glenda Hood, Florida  
Secretary Rebecca Vigil-Giron, New Mexico  
Bradley J. Clark, Alameda County, Registrar of Voters (CA)  
Helen Purcell, Maricopa County Recorder (AZ)

#### **Panel 2: Advocacy Organizations/Non-government Sector**

026523

Kay Maxwell, League of Women Voters  
Bob Williams, President and Senior Research Fellow, Evergreen Freedom Foundation  
Miles Rapoport, Demos

**Panel 3: Academics**

Professor Dan Tokaji, Moritz School of Law, Ohio State University  
John Lott, Senior Fellow AEI  
Professor Edward Foley, Moritz School of Law, Ohio State University

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

026524

Karen Lynn-Dyson/EAC/GOV  
04/08/2005 10:35 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc Holland M. Patterson/EAC/GOV@EAC  
bcc  
Subject Next steps on EAC's research agenda

Vice Chair-

I'm very excited to hear all about your trip. How extraordinary it must have been. My trip is now just three weeks away and I'm wondering if I'll be in the middle of the Consecration, when I arrive!

While next week is very busy for you in terms of the testifying on the Hill, I'd like to spend some time with you discussing ideas around research related to voter fraud. As you know, we have money we must spend, and I think this is an issue that you may want to take the lead on? I'd like to brainstorm with you regarding some ideas for EAC guidance we might issue around the subject matter, between May and September.

I'll ask Holland to find a time to meet.

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

026525

Karen Lynn-Dyson/EAC/GOV  
04/12/2005 04:17 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc Holland M. Patterson/EAC/GOV@EAC  
bcc  
Subject Meeting to discuss research effort on Voter Fraud

Welcome Back!

Might you be available to meet this Friday afternoon or Monday at 10:00?

Regards-

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

026526



"Schwarzwalder, Robert"  
<Robert.Schwarzwalder@mail  
.house.gov>  
04/18/2005 04:44 PM

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
bcc  
Subject Question re: Bond bill

History:  This message has been replied to.

Paul,

Thanks for all your help with our voter fraud project. Also, it sounds like Kerry and you had a fantastic time on your Italian vacation. Great to hear.

Question in re: the Bond-McConnell bill: I note that this measure includes a provision to require polling sites to have lists of those who already voted and those who requested an absentee ballot. In other words, in some states or jurisdictions, can people now come into a polling place and vote without being checked off a list (and thereby inviting repeated, and fraudulent, voting)? Amazing to me if this is the case.

Thanks, and best regards.

Rob Schwarzwalder

Chief of Staff

U.S. Rep. Todd Akin (R-MO)

117 Cannon House Office Building

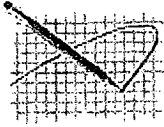
Washington, D.C. 20515

PH: (202) 225-2561

FAX: (202) 225-2563

"The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the Divinity itself; and can never be erased or obscured by mortal power." —Alexander Hamilton

026527



Raymundo  
Martinez/EAC/GOV  
04/29/2005 11:34 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Interesting development...

Paul:

Adam just learned from Julie that Buster has abstained from the tally vote regarding the provisional contract to Rutgers University (Eagleton Institute) because he has been approached by Eagleton about assisting on that project. Kind of a curious development, don't you think?

Just thought you would want to know.

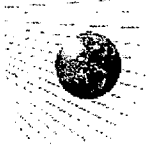
RAY MARTINEZ III  
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U.S. Election Assistance Commission  
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(202) 566-3127 (FAX)  
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026528





Paul DeGregorio /EAC/GOV  
04/29/2005 11:43 AM

To Raymundo Martinez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Interesting development...

Very curious development. I am not so sure how it would look if he got a contract from them after they got a contract from us. If Buster had a any hint of this he should have recused himself from our discussions on this particular contract.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Raymundo Martinez  
**Sent:** 04/29/2005 11:34 AM  
**To:** Paul DeGregorio  
**Subject:** Interesting development...

Paul:

Adam just learned from Julie that Buster has abstained from the tally vote regarding the provisional contract to Rutgers University (Eagleton Institute) because he has been approached by Eagleton about assisting on that project. Kind of a curious development, don't you think?

Just thought you would want to know.

RAY MARTINEZ III  
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026529

Carol A. Paquette/EAC/GOV  
05/03/2005 05:28 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
bcc

Subject Control of procurement sensitive information - FYI

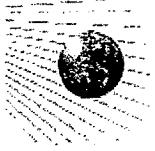
History:  This message has been replied to.

Commissioners -

I am very disturbed because I just listened to a voice mail from Dick Smolka that was left sometime after 3 p.m. today stating he had heard we had just awarded a contract to Eagleton Institute and he wants to know what for and the amount of the contract award. We have a legal obligation under the Federal Acquisition Regulations to not release any information about procurements until final decisions have been made and the parties duly notified. I haven't even received confirmation that the Tally vote has been completed and certified, much less completed the paperwork with Diana for contract award. I have repeatedly stressed with staff our obligation to not talk about procurements. I am disappointed that someone apparently does not understand that this is not optional.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026530



**Paul DeGregorio /EAC/GOV**

05/03/2005 06:14 PM

To Carol A. Paquette/EAC/GOV

cc Gavin S. Gilmour/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Raymundo

bcc

Subject Re: Control of procurement sensitive information - FYI 

Carol,

Mea culpa. I was the one who inadvertently gave Dick Smolka the information on the Eagleton Institute award. He called me about another matter this afternoon and then at the end of the conversation he switched to the subject of whether we were going to put out more RFPs for research work and whether we had made any recent awards, as he wanted to publicize it in his newsletter. I told Dick that he needed to contact you about this but in the process I told him I had just voted to award a contract to Eagleton for some of our research work, and that he could get the details from you once it was finalized (I gave him none).

I apologize for giving him this information and have just called Dick to ask him to not disclose to anyone what I told him until he heard from you that it was official. Dick said he would honor that request.

It won't happen again. Thanks for bringing it to our attention (especially mine!).

Paul DeGregorio  
Vice 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

Carol A. Paquette/EAC/GOV

**Carol A. Paquette/EAC/GOV**

05/03/2005 05:28 PM

To Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC

cc Juliet E. Thompson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC

Subject Control of procurement sensitive information - FYI

Commissioners -

I am very disturbed because I just listened to a voice mail from Dick Smolka that was left sometime after 3 p.m. today stating he had heard we had just awarded a contract to Eagleton Institute and he wants to know what for and the amount of the contract award. We have a legal obligation under the Federal Acquisition Regulations to not release any information about procurements until final decisions have been made and the parties duly notified. I haven't even received confirmation that the Tally vote has been

026531

completed and certified, much less completed the paperwork with Diana for contract award. I have repeatedly stressed with staff our obligation to not talk about procurements. I am disappointed that someone apparently does not understand that this is not optional.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

Carol A. Paquette/EAC/GOV  
05/05/2005 07:20 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
Sheila A. Banks/EAC/GOV@EAC, Adam  
bcc

Subject contract award to EAgleton Institute

Commissioners -

Just a note to clarify where we are on the Eagleton contract award. The Tally vote has been completed and certified. Julie and I are completing the contract documentation for signature by the Chair. Under the federal acquisition process, we cannot publish any information about the contract award until the contract is signed and accepted by the contractor. I have notified Eagleton that you have voted to award the contract to them and that paperwork is forthcoming. Asked them to get ready to begin work and to contact me to schedule a project kickoff meeting. Advised them that they may not make any announcements regarding contract award until after the EAC does, and that we would notify them when that occurs.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026533

Carol A. Paquette/EAC/GOV  
05/17/2005 06:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Sheila A.  
bcc  
Subject project kickoff meeting with EAgleton Institute

Commissioners -


We have tentatively scheduled May 26 at 2:30 for a kickoff meeting here with Eagleton Institute. What will happen at this meeting is Eagleton will introduce their key people and make a brief presentation on their approach to performing the provisional voting and voter ID studies. It will be an opportunity to ask questions, raise any concerns, and/or provide guidance as they begin this work. Please advise if you wish to attend this meeting. I expect it will last about an hour.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

026534



Raymundo  
Martinez/EAC/GOV  
05/26/2005 08:36 AM

To Margaret Sims/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, jthompson@eac.gov, Paul  
DeGregorio/EAC/GOV@EAC  
bcc  
Subject Re: meeting on CA 

I'm sitting in on the provisional voting meeting this afternoon at 2PM with Eagleton and Moritz School of Law representatives. That meeting should go for an hour or so. Other than that, I'm free this afternoon.

Thanks, Peggy.

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W., Suite 1100  
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026535

May 14, 2007

## STATEMENT OF WORK

### Research assistance to the Election Assistance Commission (EAC) for the development of voluntary guidance on vote count and recount procedures

**0.0 BACKGROUND:** Sec. 241 (b)(13) of HAVA allows the Commission 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. For the latter, the State Plans will be reviewed to identify the definitions provided in them regarding what constitutes a vote. A chart is provided along with this document for the Contractor to use as a baseline. This study also includes the identification of best practices (as identified by the Commission) that are used by States with respect to the recounts and contests described earlier, and whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

**1.0 OBJECTIVE:** The objective of this contract is for the EAC to obtain assistance with the collection, analysis, and interpretation of information regarding vote count and recount procedures for the purpose of developing best practices on these topics in time for implementation for the 2006 Federal elections.

**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. 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, best practices 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 best practices documents, as appropriate.

#### **3.0 SPECIFIC TASKS:**

**3.1 Update the project work plan.** The Contractor shall update and deliver the Project Plan no later than ten (10) days after the contract is awarded. The plan shall describe how the Contractor will accomplish each of the project tasks, and it shall include a timeline indicating major milestones, and the staff responsible for each task. 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 two (2) weeks of the end of each month. This report shall provide a brief summary of the activities performed and it will indicate progress against the

026536



timeline provided in the Project Plan. Any issues that could adversely affect the 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 project to discuss research findings and work progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor's 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.

### **Vote Count**

- 3.4** Collect and analyze State legislation, administrative procedures, and court cases. An understanding of standards that define what constitutes a vote on each type of voting equipment used in the States to conduct elections for Federal office 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.

Topics of particular interest include:

- Are vote counting methods and definitions uniform and consistent among the States for each type of voting equipment used? Within a State? If they are not uniform and consistent, explain how they differ from one another;
- Define what constitutes a vote on each type of voting equipment used in the States to conduct elections for Federal office. Refer to the chart provided as a baseline. Provide a complete chart listing the States and their definitions of what constitutes a vote in general and then by voting system.
- Circumstances in which a ballot would be partially or completely invalidated;
- How are voters educated about what constitutes a vote for the type of equipment they use?
- Is there polling place signage posted on Election Day educating voters about what constitutes a vote for the type of voting equipment used?
- When is a vote count officially certified?

- 3.5** Review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to vote counts. Utilizing the methodology and definitions developed, identify best practices that are used by States with respect to standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.

- 3.6** Prepare preliminary best practices document. Based on the feedback received from the Commission, the Contractor shall prepare a draft best practices 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 best practices document for publication in the Federal Register. The Contractor shall revise the document as appropriate to reflect the comments of the EAC, the Board of Advisors and the Standards Board, and prepare the draft best practices for publication in the Federal Register.
- 3.8 Arrange one public hearing for receiving public comment on the best practices. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. The Commission will handle publicity for the meeting.
- 3.9 Prepare final best practices document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise document as appropriate. Provide final version to EAC for adoption.

### **Recount**

- 3.10 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of how recounts of ballots and contests of determinations regarding whether votes are counted in such elections are conducted 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.

Topics of particular interest are:

- Type of recount provided by State law: automatic (regardless of margin of victory), candidate initiated, voter initiated, or close election (takes place if the margin of victory falls beneath a prescribed numerical threshold);
- Grounds for contest; persons authorized to contest;
- Application process for requesting a recount;
- Procedures for conducting a recount (detail how votes in such an election are counted in each voting system used);
- Standards for determining whether a vote counted in such an election;
- Procedures for stopping a recount;
- Charges for recount; funding source for conducting a recount;
- Actions by board of election upon discrepancy between initial canvass of votes and results of the recount of ballots

- 3.11 Recommend alternative approaches for future implementation of procedures for recounting ballots and contests of determinations. 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 3.5, the Contractor shall diagnose the problems and challenges of recounts of ballots and contest determination procedures and hypothesize alternative approaches.

- 3.12 Review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to recounts and

contests of determinations. Utilizing the methodology and definitions developed, identify best practices that are used by States with respect to the recounts and contests described in clause (i) of Section 241b (13)(A) of HAVA.

- 3.13 Identify whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.
- 3.14 Prepare preliminary best practices document. Based on the feedback received from the Commission, the Contractor shall prepare a draft best practices 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.
- 3.15 Revise best practices document for publication in the Federal Register. The Contractor shall revise the document as appropriate to reflect the comments of the EAC, the Board of Advisors and the Standards Board, and prepare the draft best practices for publication in the Federal Register.
- 3.16 Arrange one public hearing for receiving public comment on the best practices. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. The Commission will handle publicity for the meeting.
- 3.17 Prepare final best practices document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise document as appropriate. Provide final version to EAC for adoption.

**4.0 CONTRACT TYPE:** The contract type will be a time and materials contract in the amount of \$00,000.

**5.0 PLACE OF PERFORMANCE:** The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may also be conducted at the EAC offices.

**6.0 PERIOD OF PERFORMANCE:** The period of performance is from date of award until October 28, 2005.

**7.0 SCHEDULE OF DELIVERABLES:**

- |                                |                             |
|--------------------------------|-----------------------------|
| • Project Plan                 | 10 days after date of award |
| • Progress Reports             | monthly                     |
| • Briefings                    | TBD                         |
| • Study Design and Methodology | TBD                         |
| • Administration of Survey     | TBD                         |
| • Prepare and Analyze Data     | TBD                         |
| • Analysis Report (draft)      | TBD                         |
| • Analysis Report (final)      | TBD                         |

**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.

**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:** Funding in the amount of \$00,000 has been allocated to this contract.

**11.0 GENERAL PROVISIONS:**

**11.1 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 services that have been tendered for acceptance. The EAC may require correction or re-performance of nonconforming services at no increase in contract price. The EAC must exercise its post-acceptance rights within five (5) days after the defect was discovered or should have been discovered.

**11.2 CHANGES:** Changes in the terms and conditions of this contract may be made only by written agreement signed by authorized representatives of both parties.

**11.3 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 services, pending final resolution of any dispute arising under the contract.

**11.4 EXCUSABLE DELAYS:** The Contractor shall be liable for defaults 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 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.

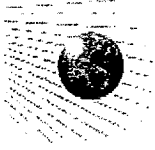
**11.5 OTHER COMPLIANCES:** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this contract.

**11.6 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, and 41 U.S.C. 423 relating to procurement integrity.

- 11.7 LIMITATION OF GOVERNMENT LIABILITY:** In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding the total amount of the contract amount.
- 11.8 TERMINATION OF CONVENIENCE:** The EAC, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is terminated, 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.

AF



Paul DeGregorio /EAC/GOV  
06/06/2005 02:59 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: Project documents for your consideration

Thanks. I'll look it over and we can discuss on Tuesday.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 06/06/2005 01:03 PM  
**To:** Paul DeGregorio  
**Subject:** Project documents for your consideration

Paul-

Enclosed please find my revisions to the job description for the Voter Fraud and Voter Intimidation Project Consultant who would work with us to help us define our work around these issues. Please revise/edit and you see fit.

Also enclosed is a draft Statement of Work for EAC project work related to vote counts and vote recounts. I'm hoping that you will be willing to serve as lead Commissioner on this project, since I believe this is an area you have expressed an interest in and are concerned about.

Let me know your thoughts on these documents and how you would like me to proceed.

Hope the weekend was restful, and look forward to seeing you 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



Vote Count and Recount SOW.doc



vote fraud project manager.doc

026542

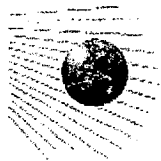
Amie J. Sherrill/EAC/GOV  
06/09/2005 09:38 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Meeting this morning


Karen just called regarding the meeting this morning. She said the voter fraud piece is going to come up - she is out of the office until about 11:30 am and she wanted to check with you in time to get you anything you might need. Also, Carol asked if you had any handouts for your speaking topic. I told her I was not sure, but that I would check with you.

Amie J. Sherrill  
Special Assistant to Vice Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

026546



Paul DeGregorio /EAC/GOV  
06/13/2005 10:40 PM

To Jeannie Layson/EAC/GOV  
cc  
bcc  
Subject Re: Eagleton press release 

Jeannie,

The news release (latest version) is OK.


I did get cornered by one of our advisory board members in San Diego who asked me why we had hired "left-wing pro-Democrat institutions--Eagleton and Moritz--to do our research". This person was concerned that they would give us biased research and issue a biased report. I told the person that I was monitoring their work closely and they were advised to do balanced work.

Paul DeGregorio  
Vice 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

026544



Jeannie Layson /EAC/GOV  
06/14/2005 08:14 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Eagleton press release 

That's a legitimate question, but you had a good answer. I'll see if I can find examples of other projects they've done that would be considered more balanced or mainstream -- that might come in handy if you're asked that question 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)

026545

Karen Lynn-Dyson/EAC/GOV  
06/21/2005 01:27 PM

To Raymundo Martinez/EAC/GOV@EAC  
cc Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.  
bcc

Subject Your recommendations for consultants to help frame EAC's  
work on voter fraud and intimidation

Ray-

As was discussed yesterday- you will get me the names of consultants and organizations who you think will be good for us to consider employing as consultants to help us frame our work around voter fraud and intimidation.

Once I have a list of names and resumes, I will work with Tom Wilkey to come up with a recommendation of a consultant or consultants to use on this project.

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

026546

Raymundo  
Martinez/EAC/GOV  
06/22/2005 08:30 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Paul  
bcc  
Subject Voter Fraud

Karen:

Per our discussion, I should have some names later today of possible academic researchers for the voter fraud/voter intimidation study. I assume you are collecting names from the other commissioners as well. Additionally, I ran across the article below in today's Seattle Times...

Wednesday, June 22, 2005, 12:00 A.M. Pacific

## **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.

026547

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.

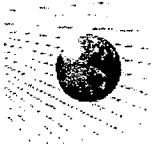
*Keith Ervin: 206-464-2105 or [kervin@seattletimes.com](mailto:kervin@seattletimes.com)*

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RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W., Suite 1100  
Washington, D.C. 20005

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[www.eac.gov](http://www.eac.gov)

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Paul DeGregorio /EAC/GOV

06/22/2005 05:35 PM

To Karen Lynn-Dyson

cc

bcc

Subject another article on voter fraud

I assume you saw this in the post.

Advertisement

[washingtonpost.com](http://www.washingtonpost.com)

## Vote Buying a Way of Life in W.Va. County

By LAWRENCE MESSINA

The Associated Press

Monday, June 20, 2005; 5:09 PM

HAMLIN, W.Va. -- According to political lore, just before John F. Kennedy's momentous win in the 1960 West Virginia primary, the Democratic boss of Logan County asked the Kennedy campaign for "35" \_ meaning \$3,500 \_ to buy votes for the presidential candidate. In an apparent misunderstanding, Kennedy's people delivered \$35,000 in cash in two briefcases.

West Virginia's coal country has a long and rich history of vote-buying \_ which explains why many folks in Lincoln County all but shrugged over the indictment last month of five people on federal charges they secured votes for liquor or a \$20 bill or two.

Sharrell Lovejoy, 83, said he has heard rumors of vote-buying since he opened his Bobcat Restaurant on Hamlin's main drag, in 1948.

"It's gone on for ages," said Lovejoy, behind his diner's hand-cranked register. "I'm sure they're still doing it. They're just more careful about it."

As with past election fraud probes, the latest case targets solely Democrats, who dominate the voter rolls and local governments through the region. In Lincoln County, population 22,100, Democrats outnumber Republicans 4-to-1; the indictment focuses largely on the party's primary elections, going back to 1990.

Not that the GOP has clean hands. Republican former Gov. Arch Moore pleaded guilty to five corruption-related charges in 1990, including one that alleged he spent \$100,000 in unreported campaign cash during his successful 1984 campaign.

"This seems to be something that is just in the blood of people in southern West Virginia. They're always looking for ways to get away with this," said Ken Hechler, who fielded election fraud complaints as West Virginia's secretary of state from 1985 to 2000.

With Hechler's help, a state-federal task force secured more than two dozen election-related

026549

convictions in Mingo County in the 1980s. Ensnared officials included a former sheriff, a county commissioner, a school board president and a Democratic Party chairman.

In the 1990s, politicians in neighboring Logan County found themselves on the defensive. Two state legislators, the county assessor and a Circuit Court judge, among others, went to jail on corruption charges that included vote-buying.

Federal investigators revisited Logan County last year. The sheriff and a city police chief resigned and pleaded guilty to exchanging money for votes. Three other people were convicted on related charges.

The current case targets Circuit Court clerk Greg Stowers, 48, the son of Lincoln County's longtime Democratic Party chairman; his deputy, Clifford Odell "Groundhog" Vance, 49; Jackie David Adkins, 36, a state highway worker; Wandell "Rocky" Adkins, 49, no relation; and Toney "Zeke" Dingess, 34.

All five have pleaded not guilty. The defense alleges that two convicted felons used by the government as informants lied to investigators to avoid stiff sentences on weapons charges.

The defense also says the government used illegal tactics during its investigation, intimidating voters by filming at polling places and trailing voters home. Prosecutors countered that the U.S. Justice Department's Public Integrity Section approved the investigators' techniques.

Prosecutors allege the defendants enlisted precinct captains to pay off voters and hand out slates listing the preferred candidates. Most votes were bought for \$20 apiece, prosecutors said. The indictment also said Stowers drove to Kentucky and filled his pickup truck with booze for distribution to voters during the 1994 primary.

The indictment cites 16 voters who were allegedly paid off. Prosecutors have not said just how many voters, all told, were supposedly bought or how much was spent, but said the conspirators assembled \$25,000 for one election alone to bribe voters.

The evidence includes footage from a hidden camera and microphone that informant Wayne Watts wore during the 2004 primary as he tried to get people to talk about buying votes.

"Man," Watts is heard muttering as he walks away from one group of locals who professed to know nothing about money and candidate lists changing hands, "this ain't no way to run an election."

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[www.eac.gov](http://www.eac.gov)



Gracia Hillman/EAC/GOV  
07/14/2005 10:32 AM

To "Paul DeGregorio" <pdegregorio@eac.gov>, "Ray Martinez" <rmartinez@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Carol A.

cc

bcc

Subject Meeting with Sen Bennett

History: This message has been replied to.

It was short. He politely asked how things were going, listened for a couple of minutes and then made it clear that his interest was fraud. We never discussed the appropriation even though we all knew why we were there.

The Senator wanted to know what EAC was doing about fraud and if we had authority to do anything about his concerns, which are listed below.

His concerns ran the gamut of over populated voter roles to election officials who cast ballots after the polls close to intimidation of legitimate poll watchers to poorly trained poll workers in Calif whose homes are polling sites and who are therefore entrusted with hundreds of blank ballots but no training. As he said, those were his concerns.

I didn't have a clue that fraud was the hot button topic for the Senator. I think he is supportive of EAC. He didn't say anything to the contrary and wasn't critical of HAVA.

Abbie Platt is the Senator's Leg Asst who sat in on the meeting. It would probably be wise if Julie or Carol followed up with her to discuss our 06 approp and the 4 FTEs. Her number is 202-224-5444.

-----  
Sent from my BlackBerry Wireless Handheld

026552



Juliet E. Thompson/EAC/GOV  
07/19/2005 05:04 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc

bcc

Subject Public meeting

There are a few needed adjustments to the agenda for the public meeting. Several of the speakers have declined, including Marci Andino, Senator Robson, and Senator Heinold. We are still awaiting confirmation from several other speakers.

Probably the most difficult to replace is Marci Andino, who was asked to speak from the perspective of a state that had both an ID requirement and a statewide voter registration database in 2004. There are only a very few states that had both of those elements: South Carolina, Kentucky, Virginia, and Louisiana. Having heard from Sarah Ball Johnson and knowing that Jean Jensen has been invited to speak on the wireless panel of the VVSG hearing, I recommend that we invite Debbie Hudnall, Clerk of Court, East Feliciana Parish, Louisiana to provide this testimony. Clerks are responsible for training poll workers on all voting requirements, including identifying voters. She can speak on how the new HAVA ID requirement differed from the ID requirement in LA, how she trained poll workers to identify voters, and how the statewide voter registration database played a role in assisting the poll workers in identifying voters.

Upon the recommendation of Secretary Rokita, we invited one of the co-sponsors of the Indiana bill to replace Senator Heinold, specifically Rep. Steve Heim. We are awaiting confirmation on that invitation. A possible alternate for Senator Robson, is Representative Tommy Reynolds, (D-MS).

If we are unable to secure a reasonable number of speakers for the meeting, we can always expand our discussion of the statewide voter registration list guidance which hopefully you all have had an opportunity to read and comment on, or we can ask Eagleton to report on their progress on Voter ID research.

Please let me know as soon as possible if it is acceptable to pursue these alternatives.

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

026553



Gracia Hillman/EAC/GOV  
07/19/2005 05:37 PM

To Juliet E. Thompson/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV, Raymundo Martinez/EAC/GOV  
cc Thomas R. Wilkey/EAC/GOV@EAC  
bcc

Subject Re: Public meeting

Julie:

My first thought is to ask why so many have declined? Is it the distance they have to travel for the brief bit of time they would appear before us?

Is it that they don't want to be on the record?

Is it because they had a previous obligation?

Beyond that, I support anything that gives us the opportunity to hear testimony that addresses different aspects and gives us different perspectives. Assuming other invitees won't decline for the reasons I raised in the questions above.

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson

**From:** Juliet E. Thompson  
**Sent:** 07/19/2005 05:04 PM  
**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez  
**Subject:** Public meeting

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Juliet E. Thompson  
General Counsel

026554

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

026555

Karen Lynn-Dyson/EAC/GOV  
08/22/2005 04:54 PM

To: Thomas R. Wilkey/EAC/GOV@EAC  
cc: Diana Scott/EAC/GOV@EAC  
bcc: Paul DeGregorio/EAC/GOV  
Subject: Kick-off meeting with the Voting Fraud Project Consultants

Tom and Diana-

This week I'm going to put the finishing touches on the consultant contracts for the three voting fraud/voter intimidation consultants.

I will be sending you the final statement of work for each of them, and the fees schedules for each, based on Diana's calculation of a daily fee for a GS 15.

Once you all sign off, I'd like to push ahead to have the three meet with the Commissioners sometime during the week of September 12.

Let me know if this plan sounds workable and if you have further recommendations about the process.

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

026556

Karen Lynn-Dyson/EAC/GOV  
08/23/2005 05:44 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc Margaret Sims/EAC/GOV@EAC  
bcc Paul DeGregorio/EAC/GOV  
Subject Kick off activities for the EAC Voting fraud/voter intimidation project

Greetings-

Tom Wilkey and I have just completed a series of very informative and productive conversations with each of you and are anxious to move to the next step of this process.

We hope to assemble our consultant team on this project, within the next three weeks and are presently awaiting final approval of your contracts from our Commissioners. We anticipate this will take place in the next week to ten days.

We would like to assemble the team- Steve Ansolabehere of MIT, Tova Wang from The New Century Foundation and Job Serebrov, who has worked extensively on these issues for the State of Arkansas, during the week of September 11. Please get back to us with some tentative dates during that week that might work with your schedule.

We look forward to working with all of you and appreciate your efforts on behalf of the EAC.

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

026557



Gracia Hillman /EAC/GOV

08/27/2005 01:37 PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, "Ray Martinez" <rmartinez@eac.gov>, Ddavidson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC

cc

bcc

Subject Work with Eagleton

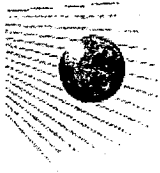
I will do what I can to help us reach a meeting of the minds on what "balance" means for the study being conducted by Eagleton. In the meantime, I've asked Tom to discuss same with each of you.

It is important that we work to reach this meeting of the minds before the upcoming meeting with Eagleton. So, I am asking Tom to put this on the agenda for our Sept 6 discussion.

Once we reach agreement, then I think that Tom should share same with Karen so she can know where we are. It is very difficult when staff hears varied points of view from individual commissioners with no commissioner consensus or agreement.

-----  
Sent from my BlackBerry Wireless Handheld

026558



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

To "Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL  
cc  
bcc  
Subject Re: e-mail from Jack Bartling

Hans,

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

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

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



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



Council on Government proposal.doc

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

Paul DeGregorio  
Vice Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
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Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
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"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>



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

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc



08/30/2005 08:32 AM

Subject Re: e-mail from Jack Bartling

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

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

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

Hans,

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

Paul DeGregorio  
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202-566-3100

026560



202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

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

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

To  
pdegregorio@eac.gov  
cc

Subject

Paul,

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

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

Jack

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

026561

August 19, 2005

To Gracia, Ray, Donetta, Tom, Julie, Karen

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

026562

from congressional 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.

**Paul DeGregorio**

Vice Chairman

US Election Assistance Commission

1225 New York Ave, NW

Suite 1100

Washington, DC 20005

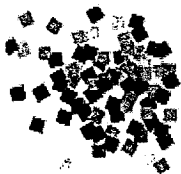
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pdegregorio@eac.gov

www.eac.gov



Amie J. Sherrill/EAC/GOV

09/14/2005 04:11 PM

To EAC Personnel, d davidson@eac.gov

cc

bcc

Subject Agenda for Sept. 15th Commissioner's Discussion

Commissioners, there are 4 discussion topics:

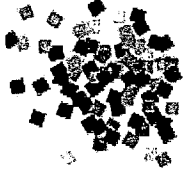
1. '06 Budget Fact sheet - Julie (documents to be handed out during discussion)
2. '07 preliminary Budget Discussion - Tom (you will receive the documents for this topic via email later today)
3. Invitations to State conferences - Chair Hillman & Tom (discussion)
4. Eagleton Institute request for input from the Commissioners on Alternative Next Steps - Tom & Karen

\*\*

\*\* Supplementary documentation will be distributed to Special Assistants and participants Tuesday morning.

Amie J. Sherrill  
Special Assistant to Vice Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

026564



Amie J. Sherrill/EAC/GOV  
09/14/2005 04:37 PM

To EAC Personnel, Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject REVISED Agenda for Sept. 15th Commissioner's Discussion

Commissioners, there are 5 discussion topics:

1. '06 Budget Fact sheet - Julie (documents to be handed out during discussion)
2. '07 preliminary Budget Discussion - Tom (you will receive the documents for this topic via email later today)
3. Invitations to State conferences - Chair Hillman & Tom (discussion)
4. Eagleton Institute request for input from the Commissioners on Alternative Next Steps - Tom & Karen

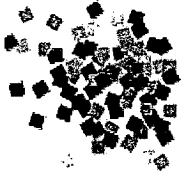
\*\*

5. EDS Settlement Issues - Julie (discussion)

\*\* Supplementary documentation will be distributed to Special Assistants and participants Tuesday morning.

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026565



Amie J. Sherrill/EAC/GOV

09/14/2005 05:43 PM

To EAC Personnel, Donetta L. Davidson/EAC/GOV@EAC

cc

bcc

Subject Final REVISED Agenda for Sept. 15th Commissioner's Discussion

Hopefully, this will be the last and final agenda for the Commissioner's Discussion. I apologize for sending so many revisions. Please feel free to delete the emails that contained previous agendas.

Commissioners, there are 6 discussion topics:

1. '06 Budget Fact sheet - Julie (documents to be handed out during discussion)
2. '07 preliminary Budget Discussion - Tom (you will receive the documents for this topic via email later today)
3. Invitations to State conferences - Chair Hillman & Tom (discussion)
4. Eagleton Institute request for input from the Commissioners on Alternative Next Steps - Tom & Karen

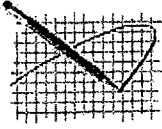
\*\*

5. EDS Settlement Issues - Julie (discussion)
6. VVSG comment disposition plan - Carol \*\*

\*\* Supplementary documentation will be distributed to Special Assistants and participants Tuesday morning.

Amie J. Sherrill  
Special Assistant to Vice Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

026566



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  
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Fax: 202-566-1392  
[www.eac.gov](http://www.eac.gov)

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026567



Paul DeGregorio /EAC/GOV  
09/19/2005 11:25 AM

To Karen Lynn-Dyson/EAC/GOV  
cc Thomas R. Wilkey/EAC/GOV  
bcc

Subject Fw: INFORMATION ONLY: media clips, 9-19-05

See report below that mentions Eagleton. Is Mr Weingart working on our study? Seems like he already has his mind made up.

-----  
Sent from my BlackBerry Wireless Handheld  
Bryan Whitener

**From:** Bryan Whitener  
**Sent:** 09/19/2005 11:10 AM  
**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez; Donetta Davidson  
**Cc:** Adam Ambrogi; Amie Sherrill; Bola Olu; Brian Hancock; Carol Paquette; daniel.murphy; DeAnna Smith; Diana Scott; Edgardo Cortes; Gavin Gilmour; Gaylin Vogel; Jeannie Layson; Joseph Hardy; Joyce Wilson; Juliet Thompson; Karen Lynn-Dyson; Margaret Sims; Nicole Mortellito; Roger Larouche; Sheila Banks; Tamar Nedzar; Thomas Wilkey; twilkey  
**Subject:** INFORMATION ONLY: media clips, 9-19-05

Commissioners:

The following items are in the news.

- Fred Lucas of the *Danbury News Times* in Connecticut provides more details on the story involving the state's reaction to EAC's advisory on lever machines. Lucas provides more details on the advisory itself as well as the role of EAC and DOJ in HAVA as follows.

"Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania.... Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws.... EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment."

- The *Washington Post* and the *New York Times* report on the recommendations released by the Carter-Baker Commission. Among other issues dealing with photo ID, voter identification numbers and registration, the Post mentions recommendations regarding EAC as follows.

"The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations.... Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission."

Commission on Federal Election Reform: Final Commission Report: Building Confidence in U.S. Elections  
<http://www.american.edu/ia/cfer/>

- Gerald Witt of the *Danville Register and Bee* in Virginia reports on the end of lever machine voting in

026566



Danville, VA. The old lever machines were auctioned off on Saturday. Brian Hancock is quoted as follows.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

- James Quirk of the *Asbury Park Press* reports on fraud allegations contained in a report by the New Jersey Republican State Committee. John Weingart of Eagleton Institute of Politics questions the magnitude of the charges and EAC is mentioned as follows.

"The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls, and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory."

- The *Toledo Blade* reports on the appointment of Keith Cunningham, director of the Allen County Board of Elections in Ohio to EAC's Board of Advisors.

#####

## Voting machines may be history

<http://news.newstimeslive.com/story.php?id=74485&category=Local>

Federal panel finds Connecticut's lever booths inaccessible to the disabled, prone to error  
By Fred Lucas

THE NEWS-TIMES

Friday, September 16, 2005

Connecticut's voting machines are prone to error, and lack accessibility for disabled and non-English speaking voters. Because of that finding by a federal panel, the state's 3,500 lever machines could be junked before the 2006 election.

They would have to be replaced with new machines that cost between \$5,000 and \$20,000 each.

State officials are scrambling to find out the ruling by the U.S. Election Assistance Commission is binding.

Many don't want to change from the old machines, which have worked fine so far, said Danbury Republican Registrar of Voters Mary Ann Doran.

"These machines do not break down and are dependable," Doran said in defense of the lever machines. "We've had no floating chads. We've had no power outages. These work."

Connecticut is spending \$33 million in federal money to buy new electronic voting machines. The state plans to ensure each polling place in the state has one electronic machine accessible to disabled people, with a Spanish ballot available and a paper voting receipt to ensure accuracy. The 769 new voting machines are supposed to be available in time for the 2006 election.

The new mandates from the federal election panel were issued under the auspices of the 2002 federal Help America Vote Act, or HAVA, passed in light of the debacle of the 2000 presidential race, when massive malfunction of the counting process in Florida the the outcome of the George W. Bush-Al Gore

race into question for two months. The commission was established to implement rules to guarantee voting would be fair and accessible throughout the country.

"The state looks to the EAC to give us guidance in meeting HAVA and they have given us none," said Secretary of the State Susan Bysiewicz Thursday. "The \$33 million is enough to provide one machine per polling place. We don't know if it will be enough to replace the 3,500 lever machines."

Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania.

Disability advocates are ready to say good riddance to the lever voting machines, said Danbury resident Chris Kuell, vice president of the state's chapter of the National Federation of the Blind.

"They are not accessible," Kuell said. "The United States has 54 million disabled people. People who are visually impaired, are in a wheelchair, or have problems with motor skills can think and vote, but they can't operate these machines."

Kuell said he was satisfied that Connecticut is at least getting one specific machine per precinct that is accessible, but hopes for the day when every district has more than one.

"California, Nevada, Kentucky and Texas have used electronic voting machines for years," Kuell said. "More states are going to having more accessible machines. This country's government is based on accurate voting and the right to vote."

Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws.

EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment.

The EAC decision faulted lever machines for not having a permanent paper record for "audit capacity" of votes.

Also, the machines do not have a documented test to show they have an error rate of less than one in 500,000. Further, the machines are not accessible to the handicapped, and have no alternate language accessibility.

Attorney General Richard Blumenthal said the commission's opinion is only advisory and not binding on any state.

"The authority to decide whether, when, and how to enforce the statute belongs to the Department of Justice," Blumenthal said. "Regarding the central issue – what constitutes an adequate paper trail or audit capacity under the statute – we believe that the DOJ will carefully and objectively consider the Secretary of the State's position, and accept good-faith compliance with the law."

Many local officials hope Blumenthal is right.

"I would like to know how they are going to implement this," said Brookfield Republican Registrar Karen Nindorf. "Who's going to pay for all this? The federal government is good at mandating things and not funding them. This is amazing to me."

Doran, the Danbury registrar, has a problem with forcing cities and towns to have ballots in an alternate language.

"Every voter should read English," Doran said. "How can you be an intelligent voter if you cannot read

English? All the campaign literature is in English."

Under federal law, if a city or town has more than 1 percent of the population that predominantly speaks another language, it must provide a ballot in that language at each polling place. Seven municipalities in Connecticut, including Danbury, must provide ballots in Spanish.

Doran said local officials still do not know for certain what machines the federal government will and won't accept, so it would be tough to know the cost of replacing 42 voting machines.

Newtown has 25 voting machines, one for every 900 people. But with electronic machines, traffic is expected to move slower, as many voters are unfamiliar with the machines. That could mean the town would have to buy 75 machines to replace its lever machines, and that would cost about \$300,000, said Newtown First Selectman Herb Rosenthal, the president of the Connecticut Conference of Municipalities.

Rosenthal, town clerks and registrars of voters will meet with Bysiewicz at 10 a.m. Wednesday to determine how the ruling might affect towns.

"I don't see how we could comply with that now," said Newtown First Selectman Herb Rosenthal, president of the Connecticut Conference of Municipalities. "It's unclear who's going to pay for this. If the federal government tries to force this, I hope the state will try to get an injunction. We've never had a problem with voting as far as I'm concerned and now the federal government says the machines are no good."

Contact Fred Lucas

at flucas@newstimes.com

or at (203) 731-3358.

#####

## Carter-Baker Panel to Call for Voting Fixes

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/18/AR2005091801364.html>

Election Report Urges Photo IDs, Paper Trails And Impartial Oversight

By Dan Balz

Washington Post Staff Writer

Monday, September 19, 2005; A03

Warning that public confidence in the nation's election system is flagging, a commission headed by former president Jimmy Carter and former secretary of state James A. Baker III today will call for significant changes in how Americans vote, including photo IDs for all voters, verifiable paper trails for electronic voting machines and impartial administration of elections.

The report concludes that, despite changes required under the Help America Vote Act of 2002, far more must be done to restore integrity to an election system that suffers from sloppy management, treats voters differently not only from state to state but also within states, and that too often frustrates rather than encourages voters' efforts to participate in what is considered a basic American right.

The 2002 federal legislation grew out of the disputed election of 2000 and is not yet fully implemented. But the Carter-Baker commission said that even with some important changes in place, the 2004 election was marred by many of the same errors as the 2000 election. "Had the margin of victory for the [2004] presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated," the report states.

Disputes over the counting of provisional ballots, the accuracy of registration lists, long lines at some polling places, timely administration of absentee ballots and questions about the security of some electronic voting machines tarnished the 2004 elections.

Many complaints came in Ohio, where President Bush narrowly defeated Sen. John F. Kerry (D-Mass.) to secure his reelection victory. Although there has been no credible evidence of partisan manipulation of the election in Ohio, the criticisms there and elsewhere have renewed calls for a more uniform, trustworthy and nonpartisan election system across the country.

Commission leaders say the goal of the panel's 87 recommendations -- at an estimated cost of \$1.35 billion -- is to make participation easier while also enhancing ballot integrity, a careful balancing of the long-standing argument between Democrats and Republicans in the administration of elections.

The most controversial recommendation calls for all voters to produce a standard photo identification card before being allowed to vote. The commission proposes that, by 2010, voters be required to use either the Real ID card, which Congress this spring mandated as the driver's license of the future in all states. For about 12 percent of eligible voters who do not have a driver's license, the commission says states should provide at no cost an identification card that contains the same key information.

Critics of voter ID cards say the requirement could raise privacy issues and intimidate or discourage some Americans, particularly the elderly, the poor and minorities, from participating in elections. To alleviate those concerns, the Carter-Baker commission urges states to make it easy for non-drivers to obtain such cards and seeks measures to ensure privacy and security for all voters. The commission report states that by adopting a uniform voter ID card, minorities would be better protected from shifting identification standards at individual polling places.

Still, the proposed ID card drew sharp dissent from some commissioners, among them former Senate Democratic leader Thomas A. Daschle (S.D.). In a dissent joined by two other commissioners, Daschle likened the ID to a "modern day poll tax."

Both parties engaged in massive voter registration drives in 2004, but inaccurate voter lists produced many of the disputes on Election Day. The 2002 election reform act mandated states to oversee voter lists, but the commission said that some states are still relying too much on the counties to produce the data and called on states to take responsibility for the lists' accuracy.

The 2002 act required the use of provisional ballots for any eligible voter who shows up at a polling place but whose name is not on a registration list, but the 2004 election produced disparate standards for determining which of those ballots were counted. Alaska counted 97 percent of its provisional ballots, but Delaware counted 6 percent, according to the commission. The group recommends that states set uniform standards.

Approximately 9 million Americans move from one state to another in any given year. The commission cited news reports asserting that almost 46,000 voters from New York City were also registered in Florida. The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations.

The Florida recount in 2000 etched the image of the "hanging chad" in the minds of many Americans and spurred the shift to electronic, rather than paper, ballots. But flaws in these new computerized systems have led to doubts about their accuracy. The commission calls on Congress to require that all electronic machines include the capacity for a paper trail that voters can use to verify their vote. Beyond that, to alleviate concerns that machines can be maliciously programmed or hacked, the commission calls for new standards to verify that machines are secure.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.

The integrity of the Ohio system was challenged in part because the chief election official, Secretary of State J. Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The commission also included other recommendations that have been proposed before, including free television time for political candidates, a request that broadcast networks refrain from projecting any results until the polls have closed in the 48 contiguous states and that both parties shift to a system of four regional primaries to pick their nominees.

The Commission on Federal Election Reform was created under the auspices of American University's Center for Democracy and Election Management. The group was funded by several foundations, and Robert A. Pastor of American University served as executive director. Its membership included Republicans, Democrats and independents.

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## Bipartisan commission proposes election reforms

<http://www.contracostatimes.com/mld/cctimes/news/12684624.htm>

Posted on Mon, Sep. 19, 2005

By David E. Rosenbaum

NEW YORK TIMES

WASHINGTON - A private commission led by former President Jimmy Carter and former Secretary of State James Baker is proposing new steps to strengthen state election procedures and recommending that Congress require the political parties to hold four regional presidential primaries in election years rather than allowing states to hold primaries whenever they wish.

The bipartisan panel, called the Commission on Federal Election Reform, said it was responding to flaws in the system exposed by the elections of 2000 and 2004.

"We should have an electoral system where registering to vote is convenient, voting is efficient and pleasant, voting machines work properly, fraud is deterred and disputes are handled fairly and expeditiously," the commission declared.

Carter and Baker, a top official under presidents Ronald Reagan and George H.W. Bush, plan to deliver the report today to President Bush and congressional leaders.

It went to news organizations last week with the understanding that the material would not be published until today.

"The American people are losing confidence in the system, and they want electoral reform," Carter said in a statement.

These are the main recommendations:

- States, not local jurisdictions, should be in charge of voter registration, and registration lists in different states should be interconnected so voters could be purged automatically from the rolls in one state when they registered in another.
- Voters should be required to present photo ID cards at the polls, and states should provide free cards to voters without driver's licenses.
- States should make registration and voting more convenient with such innovations as mobile registration vans and voting by mail and on the Internet.

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- Electronic voting machines should make paper copies for auditing.
- In presidential election years, after the Iowa caucuses and New Hampshire primaries, the other states should hold regional primaries and caucuses at monthly intervals in March, April, May and June, with the order rotated.

The recommendations sought to strike a balance between the parties' priorities. Republicans worry about voter fraud and favor photo IDs. Democrats support easier registration and ballot access.

In the aftermath of the debacle in Florida in 2000, which put the outcome of the presidential election in doubt for more than a month, a public commission headed by Carter and former President Gerald Ford recommended an overhaul of the nation's election system.

Many of the commission's proposals, including provisional ballots for those whose eligibility was challenged, became part of the Help America Vote Act, which Congress approved and Bush signed in 2002.

But the 2004 election exposed more flaws.

Some election offices did not properly process registration applications or mail absentee ballots on time. There were reports of voter intimidation and complaints that registration lists had been improperly purged. Computers malfunctioned. Evidence of voter fraud arose.

Accusations of fraud and misconduct were rife after the race for governor in Washington. Christine Gregoire finished ahead by 129 votes, and the legal challenge was not resolved until June.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.

The integrity of the Ohio system in 2004 was challenged in part because the chief election official, Secretary of State Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The new panel was organized by American University to address those problems. Its 21 members include politicians from both parties and others with elections experience.

In the 2004 campaign, state primaries and caucuses were held earlier than ever, and the nominees were effectively chosen by March.

Everything happens so quickly now in primary campaigns, the commission asserted, that "most Americans have no say in the selection of presidential nominees."

The commission said it was worthwhile for Iowa and New Hampshire to continue to vote first because "they test the candidates by genuine retail, door-to-door campaigning."

But four regional contests afterward, the panel said, would "expand participation in the process" and "give voters the chance to closely evaluate the presidential candidates over a three- to four-month period."

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Washington Post contributed to this story.

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**Wanna buy a bus? A voting booth?**

[http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB\\_BasicArticle&c=MGArticle](http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB_BasicArticle&c=MGArticle)

&cid=1031785144388

By GERALD WITT  
Register & Bee staff writer  
Monday, September 19, 2005

DANVILLE, Va. - Some of them wind up at the bottom of the ocean, but Danville is going to auction its retired voting machines on Saturday.

Since the 2002 Help America Vote Act requires localities to get updated polling systems, the question of what to do with the old lever machines arises.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

For their part, Danville officials hope to sell the city's 46 machines - alongside old fleet cars, a bus, dump trucks and lawn mowers - at a surplus auction at 10 a.m. on Sep. 24.

The voting machines are the same behemoths with curtains that were bought in 1957 and used for decades in the city, according to David Parrish, management analyst for Danville.

"They stopped making the machines in 1980," Parrish said. "And I've seen pictures of other machines that are from the '50s and '60s that are identical to what we have."

Manufactured by Automatic Voting Machine Corp. of Jamestown, N.Y., the lever machines were used in elections throughout the United States by the mid-1900s.

In 1944 the company's advertising claimed that 12 million voters used their machines, according to a Web site maintained by Douglas W. Jones, associate professor for the University of Iowa's Department of Computer Science and a principal investigator with ACCURATE - A Center for Correct, Usable, Reliable, Auditable and Transparent Elections, funded by the National Science Foundation.

When the machines were taken out of production they were cannibalized for parts. Some of Danville's units are refurbished with those parts, Parrish said.

But after the 2000 election and the following HAVA legislation, the machines had to go. The lever machines were last used in Danville for the 2004 election, he said. They still contain cards showing presidential candidates George W. Bush and John Kerry.

When expanded, the machines are about 7 feet tall and weigh more than 500 pounds. The new electronic touch-screen polling machines can fit in a suitcase.

As the old ones are removed from service, they end up being used in a number of ways. Most are just trashed, Parrish said, suggesting that they could be stripped to make a small workstation or other enclosed space.

Given some creativity, the lighted units could have a variety of second lives.

Or a history buff could show up at the Danville auction and have one loaded on a truck as a memento of one hotly contested election.

"In 10, 15 or 20 years there's not going to be very many of them left at all," Parrish said. "Everybody's getting rid of them."

No opening bid has been set, but it seems the machines may go cheap.

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"If they don't sell, we'll call up Florida and see if they want some more reefs," he said.

Contact Gerald Witt at [gwitt@registerbee.com](mailto:gwitt@registerbee.com) or at (434) 793-2311 Ext. 3039.

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## County election boards question voter-fraud study

<http://www.app.com/apps/pbcs.dll/article?AID=/20050917/NEWS/50917001>

Published in the Asbury Park Press 09/17/05

BY JAMES A. QUIRK  
FREEHOLD BUREAU

The Monmouth and Ocean County boards of elections are questioning the findings of a study by the Republican State Committee that alleges potentially widespread voter fraud, including a claim that 4,755 votes were cast throughout the state last November in the names of dead people.

Officials with both boards say they want the committee's data for their own verification purposes. They said Friday that they have received no response from the state GOP committee.

At a Trenton press conference Thursday, Republican State Committee Chairman Tom Wilson said that in the 2004 election, 92 double votes were cast in Monmouth County, and 450 votes were cast in the names of those who are dead.

In Ocean County, Wilson said, the GOP study found that 79 people voted twice<sup>11</sup> and that 271 votes were cast in the names of dead people. The study found that overall, 6,572 people registered in both New Jersey and another state appeared to have voted twice in the 2004 election.

"We haven't seen that in Ocean County, that kind of duplicate voting," said Robert Giles, executive supervisor of the Ocean County Board of Elections. "The occasional duplication that may happen is a person getting an absentee ballot, not thinking they sent it, and sending a second . . . We want to see if this is just a misinterpretation of data."

Wilson said the committee has so far verified only "a handful" of the names of duplicate or dead voters that emerged from its study. Despite this, Wilson said he stands behind the study's findings.

"We gave (the state Attorney General's Office) close to 20,000 cases where double ballots were cast," Wilson said. "That's fraud ... you can't vote twice" or if you're dead.

An Asbury Park Press review of 697,000 active voters in Monmouth and Ocean counties found that 794 shared the same names and dates of birth. Of those 794, five appeared to have voted twice ... once in Monmouth and once in Ocean ... during the 2004 presidential election.

But those voters could have been different individuals who just happened to share the same names and birthdays. For example, one woman in Ocean County lived at the same address with a man who was most likely her husband. But in Monmouth County, a woman with the same name had a spouse with a different first name and age.

Both Wilson and Steve Berlin, a consultant for the Republican State Committee who formulated most of the voter data, said the limited depth of their study did not reveal a clear pattern of statewide voter fraud.

"But what we did find presented a whole room of smoke, and we brought it to (state Attorney General) Peter Harvey and asked if there's any fire there," Wilson said.

Lee Moore, a spokesman for Harvey, would only say that the Attorney General's Office is looking into the



GOP committee's allegations.

"Once we have assessed the situation, the determination will be made as to what, if any, action is required," Moore said.

Officials admit there are flaws in New Jersey's county voter registration rolls and the general election process. For example, Franklin Goldstein, administrative assistant with the Monmouth County Board of Elections, said people often do not notify the county when a loved one dies, so the deceased may remain on the county's voter registration roll for years as "inactive" until that person is verified as dead.

The same problem exists when people move from one county to another without informing the county they've left, Giles said. This problem should be eliminated, he said, when New Jersey moves to a statewide registration system, which is to happen in January, as required by the federal Help America Vote Act.

Even with these problems, John Weingart, associate director at the Eagleton Institute of Politics at Rutgers University and a former state Department of Environmental Protection assistant commissioner, said the GOP committee's finding of 54,601 duplicate voters, 4,397 double votes and 4,755 votes cast in the names of dead people is "a dramatic allegation" that's hard to believe.

The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls, and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory.

"The notion that a lot of people would get together and figure out a way to vote more than once, all for a specific candidate, and have no one know about it, is hard to picture," Weingart said.

Investigations editor Paul D'Ambrosio contributed to this story.

James A. Quirk: (732) 308-7758 or jqquirk@app.com

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## Allen elections director named to U.S. vote panel

<http://toledoblade.com/apps/pbcs.dll/article?AID=/20050919/NEWS09/50919010/-1/NEWS>

Article published September 19, 2005

The Toledo Blade

LIMA, Ohio – Keith Cunningham, director of the Allen County Board of Elections, has been appointed to a two-year term on the board of advisers of the U.S. Election Assistance Commission.

The 37-member commission, which was created by the Help America Vote Act of 2002, serves as a national clearinghouse and a resource for information and review of procedures relating to the administration of federal elections.

Mr. Cunningham has been director of the Allen County elections board since 1998 and is president of the Ohio Association of Election Officials.

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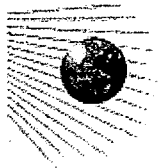
Thomas R. Wilkey/EAC/GOV  
09/19/2005 11:37 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc

Subject Re: Fw: INFORMATION ONLY: media clips, 9-19-05

Knew you would catch this and already have a call into Eagleton with a reminder that we have a Press Officer who handles these types of calls and that we have repeatedly told them that we are doing a study of vote fraud and that they were to nominally address this.  
I am coming to the conclusion that I don't like these folks.  
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  
Paul DeGregorio/EAC/GOV



Paul DeGregorio/EAC/GOV  
09/19/2005 11:25 AM

To Karen Lynn-Dyson/EAC/GOV  
cc Thomas R. Wilkey/EAC/GOV  
Subject Fw: INFORMATION ONLY: media clips, 9-19-05

See report below that mentions Eagleton. Is Mr Weingart working on our study? Seems like he already has his mind made up.

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Sent from my BlackBerry Wireless Handheld  
Bryan Whitener

**From:** Bryan Whitener  
**Sent:** 09/19/2005 11:10 AM  
**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez; Donetta Davidson  
**Cc:** Adam Ambrogi; Amie Sherrill; Bola Olu; Brian Hancock; Carol Paquette; daniel.murphy@charter.net; DeAnna Smith; Diana Scott; Edgardo Cortes; Gavin Gilmour; Gaylin Vogel; Jeannie Layson; Joseph Hardy; Joyce Wilson; Juliet Thompson; Karen Lynn-Dyson; Margaret Sims; Nicole Mortellito; Roger Larouche; Sheila Banks; Tamar Nedzar; Thomas Wilkey; twilkey@  
**Subject:** INFORMATION ONLY: media clips, 9-19-05

Commissioners:

The following items are in the news.

- Fred Lucas of the *Danbury News Times* in Connecticut provides more details on the story involving the state's reaction to EAC's advisory on lever machines. Lucas provides more details on the

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advisory itself as well as the role of EAC and DOJ in HAVA as follows.

"Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania.... Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws.... EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment."

- The *Washington Post* and the *New York Times* report on the recommendations released by the Carter-Baker Commission. Among other issues dealing with photo ID, voter identification numbers and registration, the Post mentions recommendations regarding EAC as follows.

"The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations.... Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission."

Commission on Federal Election Reform: Final Commission Report: Building Confidence in U.S. Elections  
<http://www.american.edu/ia/cfer/>

- Gerald Witt of the *Danville Register and Bee* in Virginia reports on the end of lever machine voting in Danville, VA. The old lever machines were auctioned off on Saturday. Brian Hancock is quoted as follows.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

- James Quirk of the *Asbury Park Press* reports on fraud allegations contained in a report by the New Jersey Republican State Committee. John Weingart of Eagleton Institute of Politics questions the magnitude of the charges and EAC is mentioned as follows.

"The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls, and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory."

- The *Toledo Blade* reports on the appointment of Keith Cunningham, director of the Allen County Board of Elections in Ohio to EAC's Board of Advisors.

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## Voting machines may be history

<http://news.newstimeslive.com/story.php?id=74485&category=Local>

Federal panel finds Connecticut's lever booths inaccessible to the disabled, prone to error  
By Fred Lucas

THE NEWS-TIMES

026579

Friday, September 16, 2005

Connecticut's voting machines are prone to error, and lack accessibility for disabled and non-English speaking voters.

Because of that finding by a federal panel, the state's 3,500 lever machines could be junked before the 2006 election.

They would have to be replaced with new machines that cost between \$5,000 and \$20,000 each.

State officials are scrambling to find out the ruling by the U.S. Election Assistance Commission is binding.

Many don't want to change from the old machines, which have worked fine so far, said Danbury Republican Registrar of Voters Mary Ann Doran.

"These machines do not break down and are dependable," Doran said in defense of the lever machines. "We've had no floating chads. We've had no power outages. These work."

Connecticut is spending \$33 million in federal money to buy new electronic voting machines. The state plans to ensure each polling place in the state has one electronic machine accessible to disabled people, with a Spanish ballot available and a paper voting receipt to ensure accuracy. The 769 new voting machines are supposed to be available in time for the 2006 election.

The new mandates from the federal election panel were issued under the auspices of the 2002 federal Help America Vote Act, or HAVA, passed in light of the debacle of the 2000 presidential race, when massive malfunction of the counting process in Florida the the outcome of the George W. Bush-Al Gore race into question for two months. The commission was established to implement rules to guarantee voting would be fair and accessible throughout the country.

"The state looks to the EAC to give us guidance in meeting HAVA and they have given us none," said Secretary of the State Susan Bysiewicz Thursday. "The \$33 million is enough to provide one machine per polling place. We don't know if it will be enough to replace the 3,500 lever machines."

Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania.

Disability advocates are ready to say good riddance to the lever voting machines, said Danbury resident Chris Kuell, vice president of the state's chapter of the National Federation of the Blind.

"They are not accessible," Kuell said. "The United States has 54 million disabled people. People who are visually impaired, are in a wheelchair, or have problems with motor skills can think and vote, but they can't operate these machines."

Kuell said he was satisfied that Connecticut is at least getting one specific machine per precinct that is accessible, but hopes for the day when every district has more than one.

"California, Nevada, Kentucky and Texas have used electronic voting machines for years," Kuell said. "More states are going to having more accessible machines. This country's government is based on accurate voting and the right to vote."

Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws.

EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he

would research the decision, but did not call back and could not be reached later for comment.

The EAC decision faulted lever machines for not having a permanent paper record for "audit capacity" of votes.

Also, the machines do not have a documented test to show they have an error rate of less than one in 500,000. Further, the machines are not accessible to the handicapped, and have no alternate language accessibility.

Attorney General Richard Blumenthal said the commission's opinion is only advisory and not binding on any state.

"The authority to decide whether, when, and how to enforce the statute belongs to the Department of Justice," Blumenthal said. "Regarding the central issue – what constitutes an adequate paper trail or audit capacity under the statute – we believe that the DOJ will carefully and objectively consider the Secretary of the State's position, and accept good-faith compliance with the law."

Many local officials hope Blumenthal is right.

"I would like to know how they are going to implement this," said Brookfield Republican Registrar Karen Nindorf. "Who's going to pay for all this? The federal government is good at mandating things and not funding them. This is amazing to me."

Doran, the Danbury registrar, has a problem with forcing cities and towns to have ballots in an alternate language.

"Every voter should read English," Doran said. "How can you be an intelligent voter if you cannot read English? All the campaign literature is in English."

Under federal law, if a city or town has more than 1 percent of the population that predominantly speaks another language, it must provide a ballot in that language at each polling place. Seven municipalities in Connecticut, including Danbury, must provide ballots in Spanish.

Doran said local officials still do not know for certain what machines the federal government will and won't accept, so it would be tough to know the cost of replacing 42 voting machines.

Newtown has 25 voting machines, one for every 900 people. But with electronic machines, traffic is expected to move slower, as many voters are unfamiliar with the machines. That could mean the town would have to buy 75 machines to replace its lever machines, and that would cost about \$300,000, said Newtown First Selectman Herb Rosenthal, the president of the Connecticut Conference of Municipalities.

Rosenthal, town clerks and registrars of voters will meet with Bysiewicz at 10 a.m. Wednesday to determine how the ruling might affect towns.

"I don't see how we could comply with that now," said Newtown First Selectman Herb Rosenthal, president of the Connecticut Conference of Municipalities. "It's unclear who's going to pay for this. If the federal government tries to force this, I hope the state will try to get an injunction. We've never had a problem with voting as far as I'm concerned and now the federal government says the machines are no good."

Contact Fred Lucas

at [flucas@newstimes.com](mailto:flucas@newstimes.com)

or at (203) 731-3358.

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## Carter-Baker Panel to Call for Voting Fixes

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/18/AR2005091801364.html>

Election Report Urges Photo IDs, Paper Trails And Impartial Oversight

By Dan Balz  
Washington Post Staff Writer  
Monday, September 19, 2005; A03

Warning that public confidence in the nation's election system is flagging, a commission headed by former president Jimmy Carter and former secretary of state James A. Baker III today will call for significant changes in how Americans vote, including photo IDs for all voters, verifiable paper trails for electronic voting machines and impartial administration of elections.

The report concludes that, despite changes required under the Help America Vote Act of 2002, far more must be done to restore integrity to an election system that suffers from sloppy management, treats voters differently not only from state to state but also within states, and that too often frustrates rather than encourages voters' efforts to participate in what is considered a basic American right.

The 2002 federal legislation grew out of the disputed election of 2000 and is not yet fully implemented. But the Carter-Baker commission said that even with some important changes in place, the 2004 election was marred by many of the same errors as the 2000 election. "Had the margin of victory for the [2004] presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated," the report states.

Disputes over the counting of provisional ballots, the accuracy of registration lists, long lines at some polling places, timely administration of absentee ballots and questions about the security of some electronic voting machines tarnished the 2004 elections.

Many complaints came in Ohio, where President Bush narrowly defeated Sen. John F. Kerry (D-Mass.) to secure his reelection victory. Although there has been no credible evidence of partisan manipulation of the election in Ohio, the criticisms there and elsewhere have renewed calls for a more uniform, trustworthy and nonpartisan election system across the country.

Commission leaders say the goal of the panel's 87 recommendations -- at an estimated cost of \$1.35 billion -- is to make participation easier while also enhancing ballot integrity, a careful balancing of the long-standing argument between Democrats and Republicans in the administration of elections.

The most controversial recommendation calls for all voters to produce a standard photo identification card before being allowed to vote. The commission proposes that, by 2010, voters be required to use either the Real ID card, which Congress this spring mandated as the driver's license of the future in all states. For about 12 percent of eligible voters who do not have a driver's license, the commission says states should provide at no cost an identification card that contains the same key information.

Critics of voter ID cards say the requirement could raise privacy issues and intimidate or discourage some Americans, particularly the elderly, the poor and minorities, from participating in elections. To alleviate those concerns, the Carter-Baker commission urges states to make it easy for non-drivers to obtain such cards and seeks measures to ensure privacy and security for all voters. The commission report states that by adopting a uniform voter ID card, minorities would be better protected from shifting identification standards at individual polling places.

Still, the proposed ID card drew sharp dissent from some commissioners, among them former Senate Democratic leader Thomas A. Daschle (S.D.). In a dissent joined by two other commissioners, Daschle likened the ID to a "modern day poll tax."

Both parties engaged in massive voter registration drives in 2004, but inaccurate voter lists produced many of the disputes on Election Day. The 2002 election reform act mandated states to oversee voter lists, but the commission said that some states are still relying too much on the counties to produce the data and called on states to take responsibility for the lists' accuracy.

The 2002 act required the use of provisional ballots for any eligible voter who shows up at a polling place but whose name is not on a registration list, but the 2004 election produced disparate standards for determining which of those ballots were counted. Alaska counted 97 percent of its provisional ballots, but Delaware counted 6 percent, according to the commission. The group recommends that states set uniform standards.

Approximately 9 million Americans move from one state to another in any given year. The commission cited news reports asserting that almost 46,000 voters from New York City were also registered in Florida. The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations.

The Florida recount in 2000 etched the image of the "hanging chad" in the minds of many Americans and spurred the shift to electronic, rather than paper, ballots. But flaws in these new computerized systems have led to doubts about their accuracy. The commission calls on Congress to require that all electronic machines include the capacity for a paper trail that voters can use to verify their vote. Beyond that, to alleviate concerns that machines can be maliciously programmed or hacked, the commission calls for new standards to verify that machines are secure.

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The commission also included other recommendations that have been proposed before, including free television time for political candidates, a request that broadcast networks refrain from projecting any results until the polls have closed in the 48 contiguous states and that both parties shift to a system of four regional primaries to pick their nominees.

The Commission on Federal Election Reform was created under the auspices of American University's Center for Democracy and Election Management. The group was funded by several foundations, and Robert A. Pastor of American University served as executive director. Its membership included Republicans, Democrats and independents.

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## Bipartisan commission proposes election reforms

<http://www.contracostatimes.com/mld/cctimes/news/12684624.htm>

Posted on Mon, Sep. 19, 2005

By David E. Rosenbaum

NEW YORK TIMES

WASHINGTON - A private commission led by former President Jimmy Carter and former Secretary of State James Baker is proposing new steps to strengthen state election procedures and recommending that Congress require the political parties to hold four regional presidential primaries in election years rather than allowing states to hold primaries whenever they wish.

The bipartisan panel, called the Commission on Federal Election Reform, said it was responding to flaws in the system exposed by the elections of 2000 and 2004.

"We should have an electoral system where registering to vote is convenient, voting is efficient and pleasant, voting machines work properly, fraud is deterred and disputes are handled fairly and expeditiously," the commission declared.

Carter and Baker, a top official under presidents Ronald Reagan and George H.W. Bush, plan to deliver the report today to President Bush and congressional leaders.

It went to news organizations last week with the understanding that the material would not be published until today.

"The American people are losing confidence in the system, and they want electoral reform," Carter said in a statement.

These are the main recommendations:

- States, not local jurisdictions, should be in charge of voter registration, and registration lists in different states should be interconnected so voters could be purged automatically from the rolls in one state when they registered in another.
- Voters should be required to present photo ID cards at the polls, and states should provide free cards to voters without driver's licenses.
- States should make registration and voting more convenient with such innovations as mobile registration vans and voting by mail and on the Internet.
- Electronic voting machines should make paper copies for auditing.
- In presidential election years, after the Iowa caucuses and New Hampshire primaries, the other states should hold regional primaries and caucuses at monthly intervals in March, April, May and June, with the order rotated.

The recommendations sought to strike a balance between the parties' priorities. Republicans worry about voter fraud and favor photo IDs. Democrats support easier registration and ballot access.

In the aftermath of the debacle in Florida in 2000, which put the outcome of the presidential election in doubt for more than a month, a public commission headed by Carter and former President Gerald Ford recommended an overhaul of the nation's election system.

Many of the commission's proposals, including provisional ballots for those whose eligibility was challenged, became part of the Help America Vote Act, which Congress approved and Bush signed in 2002.

But the 2004 election exposed more flaws.

Some election offices did not properly process registration applications or mail absentee ballots on time. There were reports of voter intimidation and complaints that registration lists had been improperly purged. Computers malfunctioned. Evidence of voter fraud arose.

Accusations of fraud and misconduct were rife after the race for governor in Washington. Christine Gregoire finished ahead by 129 votes, and the legal challenge was not resolved until June.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.



The integrity of the Ohio system in 2004 was challenged in part because the chief election official, Secretary of State Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The new panel was organized by American University to address those problems. Its 21 members include politicians from both parties and others with elections experience.

In the 2004 campaign, state primaries and caucuses were held earlier than ever, and the nominees were effectively chosen by March.

Everything happens so quickly now in primary campaigns, the commission asserted, that "most Americans have no say in the selection of presidential nominees."

The commission said it was worthwhile for Iowa and New Hampshire to continue to vote first because "they test the candidates by genuine retail, door-to-door campaigning."

But four regional contests afterward, the panel said, would "expand participation in the process" and "give voters the chance to closely evaluate the presidential candidates over a three- to four-month period."

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Washington Post contributed to this story.

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## Wanna buy a bus? A voting booth?

[http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB\\_BasicArticle&c=MGArticle&cid=1031785144388](http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB_BasicArticle&c=MGArticle&cid=1031785144388)

By GERALD WITT  
Register & Bee staff writer  
Monday, September 19, 2005

DANVILLE, Va. - Some of them wind up at the bottom of the ocean, but Danville is going to auction its retired voting machines on Saturday.

Since the 2002 Help America Vote Act requires localities to get updated polling systems, the question of what to do with the old lever machines arises.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

For their part, Danville officials hope to sell the city's 46 machines - alongside old fleet cars, a bus, dump trucks and lawn mowers - at a surplus auction at 10 a.m. on Sep. 24.

The voting machines are the same behemoths with curtains that were bought in 1957 and used for decades in the city, according to David Parrish, management analyst for Danville.

"They stopped making the machines in 1980," Parrish said. "And I've seen pictures of other machines that are from the '50s and '60s that are identical to what we have."

Manufactured by Automatic Voting Machine Corp. of Jamestown, N.Y., the lever machines were used in elections throughout the United States by the mid-1900s.

In 1944 the company's advertising claimed that 12 million voters used their machines, according to a Web

site maintained by Douglas W. Jones, associate professor for the University of Iowa's Department of Computer Science and a principal investigator with ACCURATE - A Center for Correct, Usable, Reliable, Auditable and Transparent Elections, funded by the National Science Foundation.

When the machines were taken out of production they were cannibalized for parts. Some of Danville's units are refurbished with those parts, Parrish said.

But after the 2000 election and the following HAVA legislation, the machines had to go. The lever machines were last used in Danville for the 2004 election, he said. They still contain cards showing presidential candidates George W. Bush and John Kerry.

When expanded, the machines are about 7 feet tall and weigh more than 500 pounds. The new electronic touch-screen polling machines can fit in a suitcase.

As the old ones are removed from service, they end up being used in a number of ways. Most are just trashed, Parrish said, suggesting that they could be stripped to make a small workstation or other enclosed space.

Given some creativity, the lighted units could have a variety of second lives.

Or a history buff could show up at the Danville auction and have one loaded on a truck as a memento of one hotly contested election.

"In 10, 15 or 20 years there's not going to be very many of them left at all," Parrish said. "Everybody's getting rid of them."

No opening bid has been set, but it seems the machines may go cheap.

"If they don't sell, we'll call up Florida and see if they want some more reefs," he said.

Contact Gerald Witt at [gwitt@registerbee.com](mailto:gwitt@registerbee.com) or at (434) 793-2311 Ext. 3039.

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## County election boards question voter-fraud study

<http://www.app.com/apps/pbcs.dll/article?AID=/20050917/NEWS/50917001>

Published in the Asbury Park Press 09/17/05  
BY JAMES A. QUIRK  
FREEHOLD BUREAU

The Monmouth and Ocean County boards of elections are questioning the findings of a study by the Republican State Committee that alleges potentially widespread voter fraud, including a claim that 4,755 votes were cast throughout the state last November in the names of dead people.

Officials with both boards say they want the committee's data for their own verification purposes. They said Friday that they have received no response from the state GOP committee.

At a Trenton press conference Thursday, Republican State Committee Chairman Tom Wilson said that in the 2004 election, 92 double votes were cast in Monmouth County, and 450 votes were cast in the names of those who are dead.

In Ocean County, Wilson said, the GOP study found that 79 people voted twice<sup>11</sup> and that 271 votes were cast in the names of dead people. The study found that overall, 6,572 people registered in both New Jersey and another state appeared to have voted twice in the 2004 election.

"We haven't seen that in Ocean County, that kind of duplicate voting," said Robert Giles, executive supervisor of the Ocean County Board of Elections. "The occasional duplication that may happen is a person getting an absentee ballot, not thinking they sent it, and sending a second . . . We want to see if this is just a misinterpretation of data."

Wilson said the committee has so far verified only "a handful" of the names of duplicate or dead voters that emerged from its study. Despite this, Wilson said he stands behind the study's findings.

"We gave (the state Attorney General's Office) close to 20,000 cases where double ballots were cast," Wilson said. "That's fraud ... you can't vote twice" or if you're dead.

An Asbury Park Press review of 697,000 active voters in Monmouth and Ocean counties found that 794 shared the same names and dates of birth. Of those 794, five appeared to have voted twice ... once in Monmouth and once in Ocean ... during the 2004 presidential election.

But those voters could have been different individuals who just happened to share the same names and birthdays. For example, one woman in Ocean County lived at the same address with a man who was most likely her husband. But in Monmouth County, a woman with the same name had a spouse with a different first name and age.

Both Wilson and Steve Berlin, a consultant for the Republican State Committee who formulated most of the voter data, said the limited depth of their study did not reveal a clear pattern of statewide voter fraud.

"But what we did find presented a whole room of smoke, and we brought it to (state Attorney General) Peter Harvey and asked if there's any fire there," Wilson said.

Lee Moore, a spokesman for Harvey, would only say that the Attorney General's Office is looking into the GOP committee's allegations.

"Once we have assessed the situation, the determination will be made as to what, if any, action is required," Moore said.

Officials admit there are flaws in New Jersey's county voter registration rolls and the general election process. For example, Franklin Goldstein, administrative assistant with the Monmouth County Board of Elections, said people often do not notify the county when a loved one dies, so the deceased may remain on the county's voter registration roll for years as "inactive" until that person is verified as dead.

The same problem exists when people move from one county to another without informing the county they've left, Giles said. This problem should be eliminated, he said, when New Jersey moves to a statewide registration system, which is to happen in January, as required by the federal Help America Vote Act.

Even with these problems, John Weingart, associate director at the Eagleton Institute of Politics at Rutgers University and a former state Department of Environmental Protection assistant commissioner, said the GOP committee's finding of 54,601 duplicate voters, 4,397 double votes and 4,755 votes cast in the names of dead people is "a dramatic allegation" that's hard to believe.

The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls, and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory.

"The notion that a lot of people would get together and figure out a way to vote more than once, all for a specific candidate, and have no one know about it, is hard to picture," Weingart said.

Investigations editor Paul D'Ambrosio contributed to this story.

James A. Quirk: (732) 308-7758 or jquirk@app.com

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## Allen elections director named to U.S. vote panel

<http://toledoblade.com/apps/pbcs.dll/article?AID=/20050919/NEWS09/50919010/-1/NEWS>

Article published September 19, 2005

The Toledo Blade

LIMA, Ohio – Keith Cunningham, director of the Allen County Board of Elections, has been appointed to a two-year term on the board of advisers of the U.S. Election Assistance Commission.

The 37-member commission, which was created by the Help America Vote Act of 2002, serves as a national clearinghouse and a resource for information and review of procedures relating to the administration of federal elections.

Mr. Cunningham has been director of the Allen County elections board since 1998 and is president of the Ohio Association of Election Officials.

#####

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 "

09/15/2005 12:04 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc tom\_oneill@verizon.net, jdobrich@eagleton.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: (908) 794-1030  
Fax: (908) 794-1030

026589



Progress Report\_AUGUST2005\_EagletonInst.pdf



Gracia Hillman/EAC/GOV

09/20/2005 03:08 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
Ddavidson@eac.gov  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, aambrogi@eac.gov,  
asherrill@eac.gov, sbanks@eac.gov  
bcc

Subject Please Make Note

Commissioners:

I thought it would be prudent to summarize in one email the days, times and agenda items that have been organized for us to discuss several important items between now and Boulder:

Thursday, 9/22: No Regularly Scheduled Discussion

Friday, 9/23: Efforts are being made to organize a conference call for Friday afternoon so that we can discuss 1) TGDC Timeline; 2) EAC Presentation at TGDC in Boulder; 3) Calif Special Audit; 4) Response to Pastor's request to brief EAC Commissioners on the Carter Baker Commission Report. To the best of my knowledge, I have not heard back from any of you to my Sept 16 email about this. I need to respond to Pastor one way or the other.

Monday, 9/26: 1:30 - 3:30 p.m. We will all be in the office and will get together with Tom and Julie to discuss (in no particular order of importance):

- Consensus and guidance to staff on focus of EAC Activities for 06 and 07
- VVPAT
- Continuation of our self-imposed prohibition of contributions to and involvement in political campaigns. Does this include contributions to PACs?
- EAC approach to issuing Best Practices
- Rotation of Chair/Vice Chair among commissioners by party affiliation

Monday, 9/26: Karen Lynn-Dyson needs time with us to discuss the Eagleton recommendation on Guidance to Provisional Voting and she is working to see if we are available to do this immediately following our 1:30 - 3:30 session.

I think I have covered all of the pending items. Please let me know if I have overlooked anything.

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

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026590

message in error, please notify the sender immediately by replying to this message and please delete this message from your computer.



Karen Lynn-Dyson/EAC/GOV  
09/21/2005 04:26 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Thomas R.  
bcc

Subject Fw: Monday Meeting??

Special Assistants-

The Chair is asking whether or not you have cleared the date and time on you Commissioner's calendars for this Monday afternoon discussion ( 3:30-5:00)

Please advise.

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/20/2005 04:22 PM —



Gracia Hillman/EAC/GOV  
09/21/2005 04:11 PM

To klynn-dyson@eac.gov, sbanks@eac.gov  
cc  
Subject Monday Meeting??

Does it look like the commissioners will all be available to meet on Monday afternoon to discuss Eagleton?

026592

Thomas R. Wilkey/EAC/GOV  
09/26/2005 06:14 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Paul  
cc Juliet E. Thompson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Eagleton Draft

We have received and are in the process of reviewing a draft of the Eagleton Report.  
This is to be considered an internal working document and should not be released to anyone without the approval of the Commissioners.  
Thank You  
Tom Wilkey

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

026593

Gaylin Vogel/EAC/GOV  
11/09/2005 04:10 PM

To Bert A. Benavides/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Sheila A.  
bcc  
Subject Re: Fw: Item Pending - Contracts Grid request

Here is the list referenced in Bert's e-mail

	Subject	Vendor	COR
1	Indirect Cost Rate Negotiations	KPMG	Peggy Sims
2	Website Maintenance	Humanitas	Jeannie Layson
3	Vote Count/Recount	University of Utah	Karen Lynn-Dyson
4	Legal Clearinghouse	University of Florida	Edgardo Cortes
5	Poll Worker Recruitment	IFES	Peggy Sims
6	College Poll Worker Recruitment	Cleveland State University	Peggy Sims
7	Public Access Portal Research	Publius.org	Edgardo Cortes
8	Records Management	Zimmerman	Tom Wilkey

Gaylin Vogel  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3116  
<http://www.eac.gov>  
GVogel@eac.gov  
Bert A. Benavides/EAC/GOV

Bert A. Benavides/EAC/GOV  
11/09/2005 03:59 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
Thomas R. Wilkey/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Carol A.  
cc Paquette/EAC/GOV@EAC, Gaylin Vogel/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC  
Subject Re: Fw: Item Pending - Contracts Grid request

Gaylin is updating the list as we speak and will send to the 4 C's and to Tom. Thanks. ----- Bert

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
11/09/2005 03:22 PM

To Bert A. Benavides/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC  
Subject Fw: Item Pending

026594

Hey Bert-

Do you have the info to complete this task for the Chair?

I don't have the latest contracts grid, but imagine either you, Gaylin or Julie do.

Also, to my knowledge, I'm responsible for:

Vote Count/Recount ( University of Utah ) ,  
Provisional Voting/Voter ID (Eagleton/Moritz)  
Election Day Survey, NVRA and UOCAVA ( Election Data Services)

Let me know if you need further help with getting this to the Commissioners.

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 11/08/2005 03:16 PM —



Gracia Hillman /EAC/GOV  
11/09/2005 03:02 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc klynn-dyson@eac.gov  
Subject Item Pending

Last week I asked that a list of the EAC contract representative for each of our approved research/study projects be provided to each commissioner. The indication was that the list existed and would be sent to us right away.

I may have missed it -- has it been sent yet?

Margaret Sims /EAC/GOV  
11/16/2005 01:12 PM

To ghillman@eac.gov, pdegregorio@eac.gov,  
rmartinez@eac.gov, donetta.davidson@  
cc Sheila A. Banks/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,  
Elieen 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

026596

## 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

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

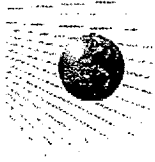


of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105<sup>th</sup> Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country 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



Paul DeGregorio /EAC/GOV

11/17/2005 10:18 AM

To Juliet E. Thompson/EAC/GOV

cc

bcc

Subject Fw: RESPONSE REQUESTED-Working Group for Voting Fraud and Voter Intimidation Project

Fyi.  
Any recommendations?

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Sent from my BlackBerry Wireless Handheld

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

**From:** Margaret Sims

**Sent:** 11/16/2005 01:12 PM

**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez;  
donetta.davidson@sos.state.co.us

**Cc:** Sheila Banks; Amie Sherrill; Adam Ambrogi; Elieen Collver; Gavin Gilmour

**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

026600



Possible Working Group Members -Serebrov.doc Possible Working Group Members- Wang.doc

026601

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 Ambrogio/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC  
bcc Paul DeGregorio/EAC/GOV

Subject Fw: Final Best Practices Document on Provisional Voting

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"  
~~XXXXXXXXXXXXXXXXXXXX~~

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  
~~XXXXXXXXXXXXXXXXXXXX@rutgers.edu~~



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

026602

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

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11/23/2005

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**Report to the  
U. S. Election Assistance Commission**

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**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](http://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.

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>

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>)

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>

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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 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."

- 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>16</sup>¶

¶  
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>16</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.

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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.

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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.

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<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.

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<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.

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.

<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
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.

## 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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Comment [01]:

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>.

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

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

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 [05]: 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><u>Received Updated Data</u></b>	<b><u>Did Not Receive Updated Data</u></b>
<u>California</u>	<u>Alabama</u>
<u>District of Columbia</u>	<u>Alaska<sup>45</sup></u>
<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<sup>46</sup></u>	<u>Idaho</u>
<u>Missouri</u>	<u>Illinois</u>
<u>Montana</u>	<u>Kentucky</u>
<u>Nebraska<sup>47</sup></u>	<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><u>26 States</u></b>	<b><u>25 States</u></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.

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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.

Table with 5 columns: State, EDS Numbers Cast/Counted, Our Numbers Cast/Counted, Differences, Updated Info from State? Rows include Alabama, Alaska, Colorado, Georgia, Hawaii, Iowa, Kansas, Montana, Nebraska, Nevada, New Mexico, N. Carolina, Ohio, Pennsylvania, Texas, Vermont, Virginia, Washington, Wisconsin.

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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

Provided on State Elections Website?					
<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



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.

025634



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  
Fax: 202-566-1392  
www.eac.gov

026635

**CONFIDENTIALITY NOTICE:** This email message is from a federal agency. 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 message and please delete this message from your computer.



tonyp@skypoint.com  
01/10/2006 01:30 PM

To pdegregorio@eac.gov  
cc  
bcc

Subject Federal standards violations by election fraud industry will  
not be tolerated

Mr. Tony Prokott  
4017 Upton Av. S #2  
Minneapolis, MN 55410-1260

January 10, 2006

Commissioners, Election Assistance Commission and  
Brian Hancock, ITA Secretariat  
United States Election Assistance Commission  
1225 New York Avenue N.W. Suite - 1100  
Washington, DC 20005

Dear Commissioners and Secretariat:

As a citizen and voter, I am writing to request that the Federal Independent Testing Authority (ITA) who inspected, for federal qualification, the software used on Diebold Optical Scan and Direct Recording Electronic (DRE) voting machines be ordered to reinspect all source code, including any code used on memory cards, looking in particular for 'interpreted' code.

'Interpreted' code is expressly banned for use on any voting systems as per the 2002 Federal Election Commission Voting System Standards Volume 1, Section 4.2.2, yet Diebold Elections Systems Inc. has admitted, in California, that they use 'interpreted' code in their AccuBasic software and it may be used elsewhere in their code.

This revelation from Diebold representatives and from documents obtained by "Freedom Of Information Act" from various sources points to a failure on the part of the ITA to use due diligence in their inspection of Diebold source code and software.

It is because of this failure on the part of the ITA and Diebold's revelations that we ask that all Diebold software/source code be reinspected by the ITA. The ITA should then report back whether the software/source code includes any 'interpreted' code and if that is the case, as Diebold has admitted, the EAC must direct that all Diebold software be decertified until such time as they can show that they have removed all such prohibited software.

This action must not stop with the Diebold products alone, as there is ample evidence that other voting systems also contain 'interpreted' code.

It must be made clear that the Voting System Standards were written by experts in the field of computer sciences and elections. The ITA have been tasked with ensuring that the voting machine vendors follow those standards or be denied federal qualification. I demand that the rules be followed by everyone.

Sincerely,

026637

Tony Prokott

026635



Bert A. Benavides/EAC/GOV  
02/01/2006 11:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
cc Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogio/EAC/GOV@EAC, Elieen L.  
Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC,  
bcc

Subject Proposed Agendas for Comm. Discussions 2-07 and 2-09

The next Commissioners' Discussions are scheduled for **Tuesday, February 7** and **Thursday, February 9** from 10:00 AM - Noon in the small conference room. The Commissioners will hold their **private discussion from 9:30 - 10:00 AM**. After reviewing the following proposed agendas, please let me know if you have additional topics to submit for consideration and if any materials are involved. Thank you.

**Proposed Agenda, Tuesday, February 7**

- |   |   |
|---|---|
| 1. AZ Letter - continuation (Julie/Gavin) | Materials included as attachment for the 1/31<br>Comm. Discussion on Mon., January 30 |
| 2. Management Guidelines (Brian)          | Document attached   |
| 3. UOCAVA Update (Karen)                  | Materials to distribute (tbd)   |



Recommended Priorities for 2006 - revised.doc

**Proposed Agenda, Thursday, February 9**

- |  |                   |
|--|-------------------|
| 1. Policy and Procedures Manual (Tom/Diana)  | Document attached |
| 2. Eagleton Provisional Voting Draft (Karen) | Document attached |



EAC-AdministrativeManual.doc



Eagleton Provisional Voting Draft.doc

Bert A. Benavides  
Special Assistant to Executive Director Thomas Wilkey  
U. S. Elections Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
202.566.3114 direct line  
202.566.1389 fax

025639

# **Presented to: ELECTION ASSISTANCE COMMISSION**

## **Management Guidelines for Election Administration**

### **Outline of Proposed 2006 Priorities**

#### **INTRODUCTION**

#### **CERTIFICATION**

- EAC federal certification process and procedures
- State certification – summary of processes – in non-state specific format

#### **SECURITY**

##### **System Security**

- Election tabulation computer hardware configuration
- Password maintenance
- Log in books
- Video cameras
- Hash code on ITA version/validation against systems in the field – NSRL procedures
- Software escrow
- Backups
- Tamper tape
- Tamper-resistant transport bags
- Seals, individually-keyed locks
- Ballot printing security and quality control

##### **Physical Security**

- Facility
- Security Cages
- Supply distribution
- Chain of Custody
- Blank ballot stock
- Ballot on Demand
- Voted Ballots
- Accessories, pieces and parts
- Inventory control

## **PRE-ELECTION TESTING**

**Logic & Accuracy** – Public observation (definitions, instructions, public handout)  
(small scale parallel test)

### **Optical scan**

- Vendor provided ballot deck and results
- Calibration tests
- Pen/pencil specific
- Oval/ballot markings – (will they count or not count)
- Ballot stock (storage of paper) (toner residue)
- Folds on ovals
- Timing Marks – markings outside of ovals
- Precinct count
  - Over/under votes
  - Blank ballots
  - Pattern vote testing
- Central count

### **Direct Recording Electronic (DRE) Voting Machines**

- Audit trail (description and sample forms)
- Manual L&A on each machine
- Pattern vote testing
- Audio Ballot

### **End-to-end system testing**

- Backup copy
- Audit trail
- Tamper-proof seals
- Security for storage

### **Hardware testing**

- Optical Scan
- DRE

### **Parallel testing**

- Optical Scan
- DRE

**First draft tentatively due 6/1/06**

**Final release after EAC approval tentatively scheduled for 8/1/06**

Bert A. Benavides/EAC/GOV  
02/03/2006 03:34 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
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 FINAL Agendas for Comm. Discussions 2-07 and 2-09

The next Commissioners' Discussions are scheduled for **Tuesday, February 7** and **Thursday, February 9** from 10:00 AM - Noon in the small conference room. The Commissioners will hold their private discussion from 9:30 - 10:00 AM. The following is the FINAL agenda for next week's discussions. Thank you.

If responding to this e-mail after 5:00 PM today, Friday, February 3, please include Nicole in your response to me as I will be out of the office attending COR Training next week . Nicole will be facilitating the Commissioners ' Discussions next week and will also be the recipient for the Weekly Project Report due by COB Wednesday , February 8. Thank you.

#### FINAL Agenda, Tuesday, February 7

- |                                   |   |
|-----------------------------------|---|
| 1. AZ Letter cont'd (Julie/Gavin) | Materials included as attachment for the 1/31<br>Comm. Discussion on Mon., 1/30 |
| 2. Management Guidelines (Brian)  | Document attached   |
| 3. UOCAVA Update (Karen)          | Materials to distribute (tbd)   |
| 4. Open Meetings (Julie)          | Mateials to be distributed no later than COB Monday,<br>Feb. 06                 |



Recommended Priorities for 2006 - revised.doc

#### FINAL Agenda, Thursday, February 9

- |  |                   |
|--|-------------------|
| 1. Policy and Procedures Manual (Tom/Diana)  | Document attached |
| 2. Eagleton Provisional Voting Draft (Karen) | Document attached |



EAC-AdministrativeManual.doc



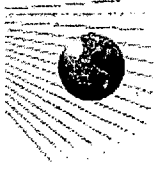
Eagleton Provisional Voting Draft.doc

Bert A. Benavides  
Special Assistant to Executive Director Thomas Wilkey  
U. S. Elections Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
202.566.3114 direct line

026642

202.566.1389 fax

026643



Nicole  
Mortellito/CONTRACTOR/EAC  
/GOV

03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Adam

bcc

Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

026644



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.


bcc

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?

026645

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. Colver/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?

026646






Gracia Hillman/EAC/GOV

03/02/2006 02:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,  
rmartinez@eac.gov, Ddavidson@eac.gov, sbanks@eac.gov,  
Juliet E. Thompson/EAC/GOV@EAC


bcc

Subject Re: Eagleton close-out meeting 

Nicole's email says the time is 2:30 to 4:30, making it sound like one meeting. I am not suggesting two separate days but inquiring about the need for there to be two separate sessions, per our GC's counsel.

026647

Karen Lynn-Dyson/EAC/GOV  
03/02/2006 02:19 PM

To Gracia Hillman/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc Ddavidson@eac.gov, Juliet E. Thompson/EAC/GOV@EAC,  
pdegregorio@eac.gov, rmartinez@eac.gov,  
sbanks@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Eagleton close-out meeting 

Commissioner-

I believe an earlier and a later meeting time on the same day can be accommodated.

I will ask Nicole to arrange for a morning briefing and an afternoon one.  
I will also ask her to check on Commissioners' availability for the morning slot.

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

Gracia  
Hillman/EAC/GOV

03/02/2006 02:08 PM To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov, rmartinez@eac.gov, Ddavidson@eac.gov,  
sbanks@eac.gov, Juliet E. Thompson/EAC/GOV@EAC  
Subject Re: Eagleton close-out meeting [Link](#)

Nicole's email says the time is 2:30 to 4:30, making it sound like one meeting. I am not suggesting two separate days but inquiring about the need for there to be two separate sessions, per our GC's counsel.

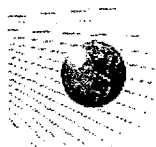
020648

**Bert A. Benavides/EAC/GOV**  
03/02/2006 02:46 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc Adam Ambrogio/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC, Donetta L.  
bcc  
Subject Re: Eagleton close-out meeting

Re April 3rd Eagleton meeting: Tom is holding this time for Julie who may be scheduling a House briefing. The other held date for the House briefing is April 5.

Nicole Mortellito/CONTRACTOR/EAC/GOV



**Nicole Mortellito/CONTRACTOR/EAC/GOV**  
03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC  
Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

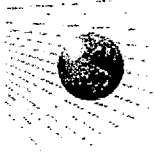
After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

026849



Nicole  
Mortellito/CONTRACTOR/EAC  
/GOV

03/08/2006 10:34 AM

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

bcc

Subject Eagleton Close-Out Meeting

Commissioners:

The **Eagleton Close -Out Meeting** has been scheduled for Monday, **April 3, 2006**. As requested, the delegation from Eagleton will give **two** presentations so that you may choose to attend the briefing which most readily jibes with your schedule.

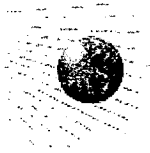
Please advise as to which session you will attend. The meetings should last approximately 45 minutes plus discussion/question and answer time.

The meeting times are either **11:00am or 2:30pm**. And will be held in the small conference room.


Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

026650



Nicole  
Mortellito/CONTRACTOR/EAC  
/GOV  
03/08/2006 01:59 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Donetta L.  
bcc  
Subject Update: Eagleton Close-Out Meeting 

Commissioners:

I have spoken with each of you or your Special Assistants and, at this time, you or they have confirmed your attendance during the following time slot for the Eagleton Briefing.

Special Assistants, if there is any change in preference please let me know.

11am

- Commissioner Hillman
- Tom Wilkey
- Commissioner Davidson

2:30pm

- Chairman DeGregorio
- Vice Chairman Martinez
- Juliet Hodgkins

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

026651

Calendar Entry

## Meeting Invitation Nicole Mortellito has invited you to a meeting

<b>Subject</b>	Eagleton Close-out Meeting - Provisional Voting	<b>Chair</b>	Nicole Mortellito/CONTRACTOR/EAC/GOV
<b>When</b>	Date Thursday 03/09/2006 Time 09:15 AM - 10:15 AM (1 hour)	<b>Invitees</b>	Juliet E. Required (to) Thompson-Hodgkins/EAC/GOV@EAC. Karen Optional (cc)
<b>Where</b>	Small Conference Room		

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

026652

Calendar Entry

## Meeting Change Nicole Mortellito has rescheduled this meeting

<b>Subject</b>	Eagleton Close-out Meeting - Provisional Voting	<b>Chair</b>	Nicole Mortellito/CONTRACTOR/EAC/GOV
<b>When</b>	Date Monday 04/03/2006 Time 02:30 PM - 04:00 PM (1 hour 30 minutes)	<b>Invitees</b>	Juliet E. Thompson-Hodgkins/EAC/GOV@EAC. Karen
<b>Where</b>	Small Conference Room	<b>Required (to)</b>	
		<b>Optional (cc)</b>	

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

026653

Calendar Entry

## Meeting Change Nicole Mortellito has rescheduled this meeting

<b>Subject</b>	Eagleton Close-out Meeting - Provisional Voting	<b>Chair</b>	Nicole Mortellito/CONTRACTOR/EAC/GOV
<b>When</b>	Date Monday 04/03/2006 Time 02:30 PM - 04:00 PM (1 hour 30 minutes)	<b>Invitees</b>	Juliet E. Thompson-Hodgkins/EAC/GOV@EAC. Karen
<b>Where</b>	Small Conference Room	<b>Required (to)</b>	
		<b>Optional (cc)</b>	

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

026654



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

History

This message has been forwarded.

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  
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Washington, DC 20005  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM —



"Tom O'Neill"

03/15/2006 08:21 PM

To klynndyson@eac.gov

cc "Tim Vercellotti" <timvercellotti@eac.gov>, arapp@eac.gov, davander@eac.gov, dlinky@eac.gov, jreed@eac.gov, joharris@eac.gov, john.weingart@eac.gov, rmandel@eac.gov, Johanna Dobrich <jdobrich@eac.gov>, tokaji.1@eac.gov, .33@eac.gov, lauracw@columbus.in.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

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comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

Tom O'Neill



ReportFinalDraft.doc

# **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.

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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.

#### 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

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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).

---

<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.

# FINAL D R A F T

## 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
  - 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
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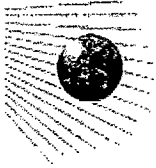
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Appendix



Paul DeGregorio /EAC/GOV  
03/17/2006 04:46 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV  
bcc  
Subject Re: Voter ID Paper --Final Draft

Karen,  
Are we allowed to make comments on this paper in which they might consider changes --or is this the final version that we are to "accept" as is?  
Paul

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 03/16/2006 08:57 AM  
**To:** Paul DeGregorio; Raymundo Martinez; Gracia Hillman; Donetta Davidson  
**Cc:** Thomas Wilkey; Juliet Thompson-Hodgkins; Amie Sherrill; Adam Ambrogi; Sheila Banks; Elieen Collver  
**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\_o'Neill@verizon.net>  
03/15/2006 08:21 PM

To klynndyson@eac.gov  
cc "Tim Vercellotti" <timvercellotti@psu.edu>, arapp@psu.edu, davander@psu.edu, dlinky@psu.edu, ireed@psu.edu, joharris@psu.edu, john.weingart@psu.edu, rmandel@psu.edu, "Johanna Dobrich" <jdobrich@psu.edu>, tokaji.1@psu.edu, toley.33@psu.edu, w@psu.edu  
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 discuss them.

Tom O'Neill



ReportFinalDraft.doc

Karen Lynn-Dyson/EAC/GOV  
03/17/2006 04:48 PM

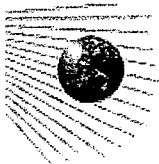
To Paul DeGregorio/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Voter ID Paper --Final Draft

I think it would be great if you could/would make comments and suggestions. I've read through the document today and have several suggestions, myself.

Would be great if I could pass all of them along to Eagleton by mid-week next week.

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

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
03/17/2006 03:46 PM

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cc Thomas R. Wilkey/EAC/GOV  
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026693

Regards-

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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"

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

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Tom O'Neill



ReportFinalDraft.doc

026693

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-

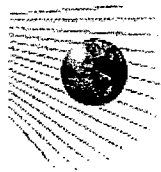
About a week ago you received a copy of the Eagleton draft report on Voter Identification. As you know, Eagleton will be coming to EAC on April 3 to do a project close-out meeting with the agency.

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

026700



Paul DeGregorio /EAC/GOV

03/24/2006 01:03 PM

To "Donetta Davidson (EAC)" <ddavidson@eac.gov>

cc

bcc

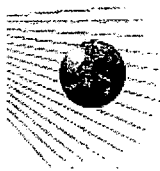
Subject Can you call me?

I'd like to talk with you about Jeff Way and about the Eagleton I'd report. Thanks.

---

Sent from my BlackBerry Wireless Handheld

026701



Paul DeGregorio /EAC/GOV

03/24/2006 06:00 PM

To Donetta Davidson (EAC)

cc

bcc

Subject Eagleton ID report

## Comments regarding the Eagleton Report on Voter ID

While the report is generally acceptable, I found some parts of it to be misleading and at times appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing “long lines and limited time,” suggesting that may be a problem for them to check ID. I am not sure what their point may be as poll workers in states that require ID checking will still have to do so no matter how long the voter lines they have. Some states may not have long lines at the polls and voters may not have the “limited time” suggested in the report.

They selectively quote the Carter-Baker Commission study to suggest that “photographic ID requirements for in-person voting do little to address the problem of registration by mail” even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact.

Their table on page 7 indicates that Missouri’s current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state “Provide ID” as they did in listing CO, CN and LA).

On page 9 and in subsequent pages they make reference to “voting age population” (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP. It wasn’t clear. You may remember that Kim Brace talked about the VAP vs. CVAP issue with us extensively and indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses.

I would like to know if the new Census report on the 2004 election released this week changes any of their perspectives.

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is “widely-accepted,” it does make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

026702





Paul DeGregorio /EAC/GOV

03/26/2006 09:34 PM

To Karen Lynn-Dyson

cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV

bcc ddavidson@eac.gov

Subject Comments regarding the Eagleton Report on Voter ID

Karen,

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Considering that the beginning of the document reveals a bias towards lesser ID requirements, I believe that it is important to highlight earlier in the report the conclusion found on page 14 that concerns by critics of voter identification requirements for African-American and elderly voters "are not borne out by the results." This will provide at least some balance to the reader.

026703

On page 20 they indicate they lack good data on why voters must cast their ballots provisionally. I thought that our Election Day Survey captured some of that data.

It appears that a preponderance of their citations are from organizations or groups that support liberal positions on election issues, or take selective information from reports to support a more liberal interpretation of views on voter ID issues. Examples would include: Carter-Baker on page 1; Tova Wang on page 4; Carter-Baker on page 4; Brennan Center page 20. While many of published articles cited on pages 30 and 31 provide relatively neutral information, those that appear to take positions (read from the description of the articles) appear to favor a liberal position on most ID issues. I would have hoped they would have provided a more balanced approach. I don't see conservative writers, such as Thor Hearne, of the American Center for Voting Rights, quoted or cited once in the report. Mr. Hearne has testified before Congress and has had several articles that address voter identification issues.

I was pleased that they cited (on page 5) a recent March 15, 2006 article from the Arizona Republic that indicated that their stricter voter ID law went smoothly in its first use.

They might want to be aware (and perhaps mention) that the recommendation from Edward Foley cited on the bottom of page 21 was actually used in Haiti's recent February 7, 2006 presidential election. In addition to each voter being provided a picture ID by the election commission, that same picture was found next to the voters' name on the voter rolls that were used at the polling places. Perhaps they want to contact Scott Lansell of IFES for confirmation. The picture ID project for Haiti's election was financed and implemented by the Organization for American States (OAS). I believe turnout for that election was over 60% of those eligible.

Please let me know if you or anyone from Eagleton has questions regarding these comments. Thanks.


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

026704

Karen Lynn-Dyson/EAC/GOV  
03/27/2006 10:21 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

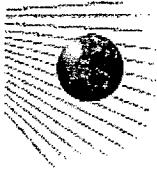
bcc

Subject Re: Comments regarding the Eagleton Report on Voter ID 

Many thanks for your comments, Mr. Chairman. I will integrate them into the report and pass them along to the Eagleton staff.

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

026705



Paul DeGregorio /EAC/GOV

03/27/2006 02:02 PM

To Juliet Hodgkins

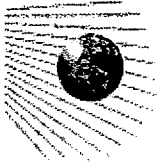
cc

bcc

Subject Fw: Comments regarding the Eagleton Report on Voter ID

fyi

— Forwarded by Paul DeGregorio/EAC/GOV on 03/27/2006 01:01 PM —



Paul DeGregorio /EAC/GOV

03/26/2006 08:34 PM

To Karen Lynn-Dyson

cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV

Subject Comments regarding the Eagleton Report on Voter ID

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026706

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202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

026707

Karen Lynn-Dyson/EAC/GOV  
03/27/2006 05:53 PM

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

bcc

Subject Providing feedback to Eagleton prior to next Monday's  
close-out meeting

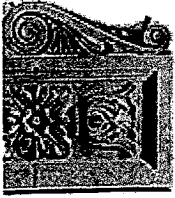
Commissioners-

I have gotten feedback on the Eagleton provisional identification research report/document and would like to pass on the general comments and questions to them **not later than COB tomorrow** .

Several of you have also suggested that **it would be good to go over , at your Thursday Commissioners meeting**, how the Commissioners will conduct the Monday meetings. You will recall that the Eagleton will conduct two sessions to accommodate the four Commissioners.

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

026708



Bert A. Benavides/EAC/GOV  
03/28/2006 01:47 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
cc Roger Larouche/CONTRACTOR/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC,  
Carrie M. Patterson/EAC/GOV@EAC, Amie J.  
bcc  
Subject Proposed Agenda for Commissioners' Staff Briefings 3-30,  
4-04 and 4-06

The next Commissioners' Staff Briefing is **Thursday, 3-30-06 from 10:00 - 12:00 PM** in the small conference room. The private briefing is **from 9:30 - 10:00 AM**. Please review the following proposed agendas and let me know if there are additional topics you want to submit for consideration and if there are materials involved. Thanks.

**Proposed Agenda, Thursday, 3-30-06**

- |  |                              |
|--|------------------------------|
| 1. SOW: Voter Registration Database (Carrie/Karen) | Memo to be distributed 3/29  |
| 2. Eagleton Draft Update (Karen)                   | Matls distributed 3/16       |
| 3. SOW: Voter Hotline (Edgardo)                    | Matls distributed 3/22       |
| 4. SOW: Katrina (Edgardo)                          | Matls distributed 3/22       |
| 5. Weekly Project Status Reports (Tom)             | Matls to be distributed 3/29 |

**Proposed Agenda, Tuesday, 4-04-06**

- |   |                         |
|---|-------------------------|
| 1. IG Update (Roger)                                  | Matls tbd               |
| 2. Policy re linking w/private voter reg. sites (Tom) | Matls to be distributed |

**Proposed Agenda, Thursday, 4-06-06**

- |  |                              |
|--|------------------------------|
| 1. Certification Update (Brian)        | Matls tbd                    |
| 2. Financial Report (Tom/Diana)        | Matls to be distributed 4-05 |
| 3. Weekly Project Status Reports (Tom) | Matls to be distributed 4-05 |

Bert A. Benavides  
Special Assistant to Executive Director Thomas Wilkey  
U. S. Elections Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
202.566.3114 direct line  
202.566.1389 fax

026709

Karen Lynn-Dyson/EAC/GOV  
04/03/2006 09:50 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Fw: Attendance at Monday Meeting

FYI- See the attendance list below

Look forward to seeing you all either at the 11:00-12:30 or 2:00-3:30 briefing.

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 04/03/2006 09:45 AM —



"Tom O'Neill"



03/31/2006 05:19 PM

To klynndyson@eac.gov

cc

Subject Attendance at Monday Meeting

Karen,

Here is the roster of the members of our team who will attend the meeting on Monday.

David Andersen, Graduate Assistant, The Eagleton Institute of Politics  
John Harris, Graduate Assistant, The Eagleton Institute of Politics  
Ingrid Reed, Director, New Jersey Project, The Eagleton Institute of Politics  
Dan Tokaji, Assistant Professor of Law, Moritz College of Law  
Tim Vercellotti, Assistant Director, Eagleton Center for Public Interest Polling, (principal author of the  
analysis of voter ID requirements on turnout)  
John Weingart, Associate Director, The Eagleton Institute of Politics  
Tom O'Neill, Project Director, The Eagleton Institute of Politics

Tom

026710







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John Weingart, Associate Director, The Eagleton Institute of Politics  
Tom O'Neill, Project Director, The Eagleton Institute of Politics

Tom

026712

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

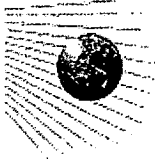
026713

Margaret Sims /EAC/GOV  
05/12/2006 04:04 PM

To pdegregorio@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC  
bcc  
Subject New Working Group Member

FYI - The person I mentioned as a replacement for David Norcross, who was unavailable, could not attend or Voting Fraud-Voter Intimidation Working Group meeting. Our consultant, Job Serebrov, suggested Benjamin Ginsberg, who is willing. I'm sorry I could not check with you on this beforehand --- things happened so fast! --- Peggy

026714



Paul DeGregorio /EAC/GOV  
05/14/2006 12:01 PM

To Margaret Sims/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV  
bcc  
Subject Re: New Working Group Member

Ben Ginsberg is one of the most respected election law attorneys in the country. Great choice.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Margaret Sims  
**Sent:** 05/12/2006 04:04 PM  
**To:** Paul DeGregorio  
**Cc:** Amie Sherrill  
**Subject:** New Working Group Member

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026715

Margaret Sims /EAC/GOV  
05/15/2006 03:51 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, ecortes@eac.gov, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
bcc  
Subject Voting Fraud-Voter Intimidation Project Briefing

Dear Commissioners:

Attached is our consultants' analysis of the literature reviewed for the Voting Fraud-Voter Intimidation preliminary research project. It was not included in the information packets delivered to you on Friday, May 12, because we did not receive it until today. I thought you might be interested in having it prior to tomorrow's briefing.

Peggy Sims  
Election Research Specialist



Literature-Report Review Summary.doc

026716

## Existing Research Analysis

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.



Karen Lynn-Dyson/EAC/GOV

05/17/2006 09:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
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: Voter ID Report and Appendices

Commissioners-

Attached please find the Eagleton report on Voter Identification which has just been received.

I look forward to our discussion of this item at Thursday'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 05/17/2006 09:31 AM -----



"Tom O'Neill"

05/17/2006 09:25 AM

To klynndyson@eac.gov

cc tokaji.1@  
lauracw@ "Tim Vercellotti"  
>, arapp@  
davander@, dlinky@  
ireed@  
john.weingart@ rmandel@sci.rutgers.edu,  
"Johanna Dobrich"

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



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## **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

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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> <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

		<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

		<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 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.</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 s. 101.49.</p> <p>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:</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> <p>(1) A valid Georgia driver's license;</p> <p>(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;</p> <p>(3) A valid United States passport;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(7) A valid Georgia license to carry a pistol or revolver;</p> <p>(8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States;</p> <p>(9) A valid United States military identification card;</p> <p>(10) A certified copy of the elector's birth certificate;</p> <p>(11) A valid social security card;</p> <p>(12) Certified naturalization documentation;</p> <p>(13) A certified copy of court records showing adoption, name, or sex change;</p> <p>(14) A current utility bill, or a legible copy thereof, showing the name and address of the elector;</p> <p>(15) A bank statement, or a legible copy thereof, showing the name and address of the elector;</p> <p>(16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or</p> <p>(17) A government document, or a legible copy thereof, showing the name and address of the elector.</p> <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>	
<p>Indiana</p>	<p>Sign Name</p>		<p>West's Annotated Indiana Code § 3-11-8-25</p>
<p>Iowa</p>	<p>Sign Name</p>	<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>	<p>Iowa Code § 49.77</p>

		<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>	L.a. Rev. Stat. Ann. 18:562

		<p>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>.</p> <p>Effective: 1/1/2002</p>	
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>	Me. 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>	<p>Mass. Ann. Laws 54 § 76</p> <p>950 Mass. Code Regs. 52.03</p>
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</p>	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 receipted 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 <u>RSA 659:27-33</u> , 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



		<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 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>	Okla. Stat. Ann. tit. 26, § 7-114  Okla. Stat. Ann. tit. 26, § 7-117
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

		<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:  <b>BALLOT APPLICATION</b></p> <p>(Poll List)          Senatorial District _____          Representative District _____          Voting District _____</p> <p>Election          Date _____</p> <p>I hereby certify that I am a registered and qualified elector in the above voting district of          City of _____</p> <p>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)</p> <p>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. 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

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
<b>Pseudo-R-Squared</b>	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
<b>Pseudo-R-Squared</b>	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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<b>Table 7. Probit model of turnout for Hispanic voters.</b>				
<b>Variable</b>	<b>Maximum Requirements</b>		<b>Minimum Requirements</b>	
	<b>Unstandardized Estimate</b>	<b>Standard Error</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Sign name</b>	-0.20	0.20	-0.19	0.11
<b>Match signature</b>	-0.12	0.20	-0.18	0.12
<b>Non-photo ID</b>	-0.40*	0.20	-0.38**	0.13
<b>Photo ID</b>	-0.13	0.23	----	----
<b>Affidavit</b>	----	----	-0.25	0.16
<b>Age 25-44</b>	0.11	0.09	0.11	0.09
<b>Age 45-64</b>	0.35**	0.10	0.36**	0.10
<b>Age65+</b>	0.38**	0.11	0.40**	0.11
<b>High School</b>	0.18**	0.08	0.19*	0.08
<b>Some college</b>	0.46**	0.07	0.46**	0.07
<b>College</b>	0.63**	0.11	0.64**	0.11
<b>Graduate School</b>	0.72**	0.13	0.73**	0.13
<b>Household income</b>	0.03**	0.01	0.03**	0.01
<b>Married</b>	0.05	0.06	0.05	0.06
<b>Female</b>	0.09*	0.04	0.09*	0.04
<b>Battleground state</b>	0.31**	0.06	0.36**	0.07
<b>Competitive race</b>	-0.06	0.13	-0.05	0.13
<b>Employed</b>	0.13	0.12	0.14	0.12
<b>Member of workforce</b>	0.07	0.13	0.08	0.13
<b>Native-born citizen</b>	-0.18**	0.07	-0.20**	0.07
<b>Moved within past 6 months</b>	-0.38**	0.08	-0.39**	0.08
<b>Constant</b>	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
-2 Log Likelihood	-8966.7	
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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**For review by the EAC's Advisory Boards**

**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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- 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

**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

# 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

Dr. Ruth B. Mandel  
Director, Eagleton Institute of Politics  
Board of Governors Professor of Politics  
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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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**For review by the EAC's Advisory Boards**

- 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 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.

- 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>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.

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South Carolina	Photo ID <sup>9</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	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



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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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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**

**REVISED FINAL D R A F T**  
**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

**REVISED FINAL D R A F T**  
**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

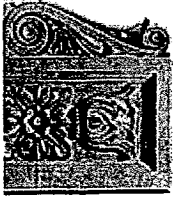
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<sup>33</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true 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

**REVISED FINAL D R A F T**  
**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.

---



Bert A. Benavides/EAC/GOV  
05/26/2006 02:02 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
cc Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogio/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Elieen L. Coliver/EAC/GOV@EAC,  
bcc

Subject Agenda for Comm. Staff Briefing 5-30-06

**Commissioners' Staff Briefing, Tuesday, 5-30-06  
9:30 AM - 11:30 AM EST, Small Conference Room**

**CONFERENCE CALL IN # 1-866-222-9044, Passcode 63114**

*Tuesday, 5-30-06*

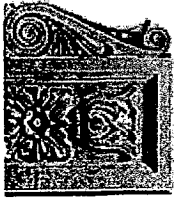
- All Commissioners are expected to participate .
  - Executive Director Wilkey participating via teleconference .
1. Testimony, House Admn Hearing (Julie)                      Matls distributed 5-25

*Proposed Agenda - Thursday, 6-01-06*

- All Commissioners are expected to participate .
1. Resolutions - Bd of Advisors/Std.Bd. (TBD)                      Matl to be determined
  2. TGDC /Voting System Issues (Brian H)                      No materials
  3. Eagleton Voter ID Study (KLD)                      Matls distributed 5-17
  4. Eagleton Social Security SOW (KLD)                      Matls distributed 5-16
  5. Weekly Project Report (Tom)                      Matls to be distributed

Bert A. Benavides  
Special Assistant to Executive Director Thomas Wilkey  
U. S. Elections Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
202.566.3114 direct line  
202.566.1389 fax

026918



Bert A. Benavides/EAC/GOV  
05/31/2006 09:13 PM

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

Subject Agenda for Comm. Staff Briefing 6-01-06

**Commissioners' Staff Briefing, Thursday, 6-01-06  
9:30 AM - 11:30 AM EST, Small Conference Room**

**AGENDA**

● **All Commissioners are participating .**

- |   |  |
|---|--|
| 1. Resolutions - Bd of Advisors/Std.Bd. | Matls distributed 5-31(see below for copy) |
| 2. TGDC /Voting System Issues (Brian H) | No materials                               |
| 3. Eagleton Voter ID Study (KLD)        | Matls distributed 5-31by KLD/Tamar         |
| 4. Social Security SOW (KLD)            | Matls distributed 5-31by KLD/Tamar         |

**RESOLUTIONS - Agenda Item #1**

From Adam:



2006Executive Board Recommendations(Final).doc

From DeGregorio: Attached are all but one of the resolutions passed by the Board of Advisors at their recent meeting. JR Harding introduced a resolution at the last minute regarding EAC website access for people with disabilities. It was passed but we don't have a copy of the final version. Please note that the 3 resolutions from Cameron Quinn are a work in progress, as they designated the resolutions committee to add the whereases.



5.24.06 Resolutions submitted by JR Harding and Jim Elekes.doc



5.24.06 Resolutions submitted by Cameron Quinn.doc



5.24.06 Resolutions submitted by Chris Nelson.doc



5.24.06 Resolutions submitted by Doug Lewis.doc

**PROPOSED AGENDA, Tuesday, June 6**


● **Commissioners' participation tbd .**

- |  |                               |
|--|-------------------------------|
| 1. House Comm. Admn. Hearing (Tom/Julie) | Matls to be determined        |
| 2. Financial Report (Tom)                | Report to be distributed 6-05 |

Bert A. Benavides  
Special Assistant to Executive Director Thomas Wilkey  
U. S. Elections Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
202.566.3114 direct line  
202.566.1389 fax

026820

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

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.

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 agenda, page 3. The document you referred to was the update the project manager gave at this public meeting, and it has been made available to anyone who asked for it. The final culmination of this project can be found [here](#), and links to the attachments provided by the consultants are available by going to page 24 of this report. The commissioners adopted this report at a [public meeting in](#)

026821



Dec. 2006.

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  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

Karen Lynn-Dyson/EAC/GOV  
01/30/2007 05:03 PM

To "John Weingart"  
<john.weingart@rutgers.edu>@GSAEXTERNAL  
cc  
bcc Donetta L. Davidson/EAC/GOV  
Subject Re: February 8th EAC meeting

John-

At the present, I envision my role will merely be to provide a chronology of the project and to provide a context to what has happened with the project and the reports, thus far.

All of the Commissioners will have read your final June 28, 2006 report on Voter Identification and will be addressing their questions to the material contained in that 32 page report and the appendices.

When, or if, I get additional information on the substance of the meeting I'll be certain to pass that information along.

Regards-

Karen Lynn-Dyson  
Research Director  
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>

01/30/2007 04:55 PM

To "Karen Lynn-Dyson" <klynndyson@eac.gov>  
cc  
Subject February 8th EAC meeting

Karen - I understand you will be a panelist on the Eagleton/Moritz Voter ID study along with Tom O'Neill and Tim Vercellotti at next Thursday's EAC meeting. Could you let us know what you will be covering so we prepare comments that will not be redundant.

Thanks. I hope your new year is off to a good start.

John

--

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

026823

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 09:40 AM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc Elieen L. Collver/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Matthew  
Masterson/EAC/GOV@EAC  
bcc  
Subject Meeting regarding draft voter fraud and intimidation report

Commissioners & Tom,

After checking all of your schedules, it appears that Wednesday, Nov. 29 in the morning is available for everyone. Let's set 10:30 as the time. I will reserve the small conference room. Will anyone other than Donetta be calling in?

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

026824

Jeannie Layson/EAC/GOV

11/28/2006 10:27 AM

To EAC Personnel

cc

bcc

Subject FOIA Request

History:

 This message has been replied to:

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.

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)



Elieen L. Collver/EAC/GOV  
10/17/2006 05:06 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: NEED APPROVAL: Brennen Cen. letter 

History:  This message has been replied to

by the way, i forwarded the commissioner's staff meeting materials to Trudie's aol account so you can print them out.

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  
Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
10/17/2006 04:57 PM

To "Elle Collver" <ecollver@eac.gov>  
cc  
Subject Fw: NEED APPROVAL: Brennen Cen. letter

Here is the time that I can do the phone call

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Donetta L. Davidson  
**Sent:** 10/17/2006 03:54 PM  
**To:** Jeannie Layson  
**Subject:** Re: NEED APPROVAL: Brennen Cen. letter

Jeannie. My appointments are at 9 20 - 12 00 - 2 00. I could call him tomorrow at 9 DC time or about 6 DC time.  
Let me know if that works.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 10/17/2006 10:06 AM

026825

**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)



"Todd Rokita"

06/02/2006 09:38 PM

To d davidson@eac.gov

cc trokita@eac.gov sokeson@eac.gov

bcc

Subject FW: Voter ID Law

History

This message has been forwarded.

Donetta--- this is the person to whom the EAC is paying taxpayer money to perform dispassionate research on voter fraud? No wonder she has concluded for all of us that voter fraud (in person) really does not exist, except for maybe a few isolated places in the Midwest. If her report sees the light of day, I can almost guaranty problems. The fact that the report may have a co-writer does not solve this problem. She should not even be paid. There is a clear agenda behind her conclusions. I believe the credibility of the EAC is in question with your decision to hire this person and allow her to report on behalf of the EAC on either election fraud or voter intimidation. I would like a response from the Chairman that addresses this article. Thanks

---

## Rumble in the Desert

Civil rights groups are challenging Arizona's Prop 200, which endangers voting rights for citizens.

**Tova Andrew Wang**

June 01, 2006

*Article created by The Century Foundation.*

Without a lot of fanfare, a very important lawsuit was filed last week by the Lawyers Committee for Civil Rights and other groups in Arizona. Finally, two years after the passage of the quite pernicious Prop 200, groups are finally taking serious action to combat it.

Basically an anti-immigrant measure, Prop 200 set out a bunch of restrictions on access to services for immigrants. However, with respect to voting rights, Prop 200 set up a situation blocking the right to vote for many *citizens* by requiring every person registering to vote to prove citizenship.

As the Lawyer's Committee describes it, Proposition 200 requires that that counties reject any voter registration application that does not include satisfactory proof of citizenship, such as a copy of the applicant's birth certificate, passport, a driver's license or non-operating identification license, but only if issued after October 1, 1996, a tribal identification card or naturalization documents. This even applies to voters who must re-register simply because they moved across county lines.

This measure is at least as damaging as many of the voter identification laws being passed and contemplated across the country. This stops someone from being part of the

026826

process before they've even gotten to square one. As I have repeatedly discussed with respect to ID laws, many voters are unlikely to have the required documentation and efforts to obtain the documentation will take time and money, therefore amounting to an unconstitutional poll tax.

Ironically, it has proven to be eligible voters who have been caught in the snare of this act. Last year in Maricopa County, home to Phoenix, more than 10,000 people trying to register were rejected for being unable to prove their citizenship. A spokeswoman for the recorder's office said most are probably U.S. citizens whose married names differ from the ones on their birth certificates or who have lost documentation. In Pima County, home to Tucson, 60 percent of those who tried to register initially could not. The elections chief said that all appeared to be U.S. citizens, but many had moved to Arizona recently and couldn't get their birth certificates or passports.

Moreover, Prop 200 is based on the idea that noncitizens are coming to the polling place and voting illegally. The premise is false. There is no evidence of any number of immigrants knowingly voting in the past in Arizona, and certainly it would seem unlikely when the last thing immigrants want to do in these times is draw official attention to themselves.

Finally, as the lawsuit persuasively argues, the measure also makes it virtually impossible for groups to conduct voter registration drives in Arizona. How many people go to the supermarket with their birth certificate?

The recent decision in Indiana upholding its draconian ID bill and the intolerance toward immigrants being displayed right now makes me worry about how the Arizona courts will respond. They upheld the Proposition in another context once before. But anyone who cares about the right to vote—for qualified, U.S. citizens—should hope that the law is struck down as the unconstitutional and anti-democratic measure it is.

**Tova Andrea Wang is Democracy Fellow at The Century Foundation.**

David R. Maxwell

Campaign Assistant

Todd Rokita

Secretary of State Reelection Campaign

47 South Meridian Street, Suite 200

Indianapolis, Indiana 46204

Direct: [REDACTED]

Mobile: [REDACTED]

[REDACTED]



Bryan Whitener/EAC/GOV  
05/10/2007 05:45 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc  
Subject FYI - Today's media inquiries ( 5-10-07, Thurs )

Commissioners:

Today we had the following media inquiries:

(1) Leslie Robinson, a reporter for the news blog, ColoradoConfidential.com inquired about the rules and regulations that EAC board members must adhere to. She said that one of the EAC members from Colorado, Dan Kopelman, has recently been cited by the Secretary of State for his business of selling voter lists and consulting partisan candidates. She asked if these infractions cause Kopelman to withdraw from the EAC board. We explained that, according to SEC. 213 of the Help America Vote Act of 2002 (HAVA), there are two EAC Standards Board representatives from each state, that one is a local official, one is a state official and that both individuals represent their state on the Board. We said that the state representatives are selected by the Chief State election official from each state. We said that, with respect to Colorado, Mr. Kopelman was selected to serve on the Board by Colorado Secretary of State Michael Coffman. We suggested Ms. Robinson contact their office for questions regarding the appointment of state representatives from Colorado.

(2) Rose Marie Berger, Associate Editor of Sojourners/Call to Renewal, asked for the document on voter fraud authored by Tova Wang and Job Serebrov. We replied that our Inspector General is currently reviewing the circumstances surrounding this research and noted page two of the following memo from the chair. We said that when that process is complete we'll be glad to discuss it further. 04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

###

026828

Bryan Whitener/EAC/GOV  
05/11/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 5-11-07, Frid )

Commissioners:

Today we had the following media inquiries:

(1) Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

- 1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
- 2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: [here](#). and said we'd be glad to make sure she receives the IG's review when it is completed.

(2) Jenna Portnoy of the Doylestown Intelligencia in Bucks Co., PA called again to ask about EAC's progress in determining the status of Pennsylvania's 102 funds. She wants to know the amount of money, if any, that they will have to return. We said that EAC is still reviewing the certifications submitted by the states and we hope to have this process completed as soon as possible. We said we are also evaluating all the reports submitted by the states regarding their 101 and 251 funds expenditures.

026829

Bryan Whitener/EAC/GOV  
05/14/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 5-14-07, Mon )

Commissioners:

Today Meg Cox, a freelance journalist in Chicago, sent us the same two questions she sent us last Friday (see below). She had not been satisfied with our response. She is working on an article about voter fraud and voter ID laws. She said she is concerned that journalists are receiving a substitute report from EAC and not the real thing. We replied that we directed her to the one and only report adopted by EAC -- Election Crimes: An Initial Review and Recommendations for Future Study -- We noted that it contains clear language about the role of the consultants, identifies them by name and that their bios are included in the EAC report as Appendix D here. We said we would notify her when the IG has completed his review of this subject. We also noted the following contents of the report:

- Page one: "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.
- Page three: To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report.
- Page four: 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.

###

**BACKGROUND: Last Friday's Q&A.**

Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

- 1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
- 2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: here. and said we'd be glad to make sure she receives the IG's review when it is completed.

026830

Juliet E. Hodgkins/EAC/GOV  
05/02/2007 05:16 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Eileen L. Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, "Fabre, Stacie" <[REDACTED]@eac.gov>, Stephanie

bcc

Subject: Feinstein and Durbin letter

Commissioners and Tom,

There are several questions in the Feinstein and Durbin letter that I need your assistance responding to. Particularly, I need your responses as to question 1 for both the Voter ID study (page 4 -- numbered at the top) and Voting Fraud and Intimidation (page 5 -- numbered at the top). While these two questions actually say the same exact thing, I believe that the question under Voter ID was intended to refer to the Voter ID study and not the Voting Fraud and Voter Intimidation Study.

In addition, please look at questions 5 and 9 under Voting Fraud and Voter Intimidation. Each of these questions require information and documents that you may have. Last, if you have any input on the response to Question 10 under Voting Fraud and Voter Intimidation, please let me know.

I am currently working on the response and anticipate working on it tomorrow and Friday. I would appreciate any information that you may have.



Feinstein and Durbin letter.pdf

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

026831

**United States Senate**  
WASHINGTON, DC 20510

April 12, 2007

The Honorable Donetta Davidson  
Chairman  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, DC 20005

Dear Commissioner Davidson:

We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.

While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.

On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.

On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a \$560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.

Commissioner Davidson

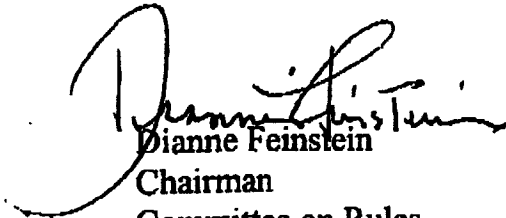
- 2 -

April 12, 2007


It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,



Dianne Feinstein  
Chairman  
Committee on Rules  
and Administration



Richard J. Durbin  
Chairman  
Subcommittee on Financial  
Services and General  
Government  
Committee on Appropriations

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We request information and documentation from the Commission that answer the following questions:

**COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

#### **COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.



4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

Jeannie Layson/EAC/GOV

04/27/2007 04:54 PM

To EAC Personnel

cc

bcc

Subject Voter ID and Vote Fraud and Voter Intimidation IG Review Update

Hello everyone,

The chair wanted to distribute the attached memo from the IG, which contains guidance about how we proceed during the review of the voter ID and the vote fraud and voter intimidation research projects. She will continue to keep staff informed as this review moves forward, and she thanks everyone for their continued cooperation and hard work.



IG Memo to Chair on Review of Studies ( 4-27-07 ).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](http://www.eac.gov)

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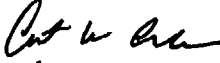


**U.S. ELECTION ASSISTANCE COMMISSION**  
**OFFICE OF INSPECTOR GENERAL**  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

April 27, 2007

Memorandum

To: Donetta Davidson  
Chair, U.S. Elections Commission

From: Curtis Crider   
Inspector General

Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector  
General Investigation of the Voting Fraud and Voter Intimidation Report

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon its completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

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Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of their contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.

Curtis Crider/EAC/GOV  
04/23/2007 02:27 PM

To EAC Personnel  
cc  
bcc  
Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

026840

Bryan Whitener/EAC/GOV  
04/23/2007 11:25 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject CQ WEEKLY article today - Election Board Facing Votes of No Confidence

History: This message has been forwarded

Commissioners:

We just accessed the following article that appears today in Congressional Quarterly's CQ WEEKLY.



wr20070423-17election-cht.pdf

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#### Election Board Facing Votes of No Confidence

CQ WEEKLY - IN FOCUS  
Congressional Quarterly  
April 23, 2007 - Page 1164  
By David Nather, CQ Staff

After the turmoil over the 2000 presidential election, Congress created a bipartisan commission that was supposed to do nice, non-controversial things: hand out some federal grants, do some studies, certify voting machines, promote voting practices that seem to work well.

Instead, the Election Assistance Commission is now surrounded by controversy and tough questions. And the same lawmakers who could barely be bothered to pay attention to its creation four years ago are putting it under the microscope now.

Democrats were enraged by the commission's handling of a report on voter fraud – the panel ordered up the report (which found little evidence of fraud), sat on the document for several months, then released a rewritten version that concluded “there is a great deal of debate” about how much voter fraud takes place. Republicans have contended that voter fraud is a big problem and benefits Democrats.

A second commission report on voter identification laws found that the laws can reduce turnout, particularly among Hispanics. The panel delayed releasing that report for months, then made it public even while refusing to endorse its conclusions.

Voting rights groups have criticized the commission's handling of the reports, and two powerful Democratic senators – Dianne Feinstein of California, who chairs the Rules and Administration Committee, and Majority Whip Richard J. Durbin of Illinois, who chairs the Appropriations subcommittee that funds the commission – have asked the panel to answer a barrage of questions. More than anything, they want to know whether the commission received “any outside communication or pressure” to delay or change the reports.

The controversy has put a harsh spotlight on the commission in recent weeks, but it's hardly the only case where the panel's actions have gotten it into trouble. Last year, the commission angered Arizona's secretary of state when it refused to grant the state permission to require voters to provide proof of citizenship when they registered by mail using federal forms. Secretary of State Jan Brewer, a

026841

Republican, called the decision “inexcusably wrong” because Arizona’s voters called for the requirement in Proposition 200 and because the Department of Justice had approved it.

On top of it all, secretaries of state have been suspicious of the commission all along, fearing that it would turn into yet another federal regulatory agency. The National Association of Secretaries of State called for the commission to be abolished after the 2006 election, since its three-year authorization expired at the end of fiscal 2005. New Hampshire Secretary of State William Gardner, a Democrat, urged the group to take that position because, he said, “I could see what could potentially be coming. . . . I remember when the Federal Election Commission was basically a clearinghouse as well.”

These are a lot of pressures for a four-member commission with a staff of 19 and an operating budget of just over \$11 million, which got so little attention from Congress that it took a year before its first four members won Senate confirmation. The commission also has strict limits on what it can do under the 2002 election overhaul law that created it. Among other things, it’s not supposed to be a regulatory agency – though it does have some authority under the National Voter Registration Act of 1993, the “motor voter” law that was at issue in the Arizona dispute.

### ‘We Took On Too Much’

Donetta L. Davidson, the Republican who in January became the commission’s third chairman, says she takes seriously the questions about the reports on voter fraud and voter identification. The commission has referred the issue to its own inspector general, asking him to take a hard look at the panel’s contracting procedures for outside research projects. “We want to be as transparent as possible,” Davidson said.

But Davidson, who was previously Colorado’s secretary of state, says the biggest problem was that the commission may have been trying to move too many reports with a small staff that mostly works with outside contractors rather than producing its own research. “I think that was our biggest mistake – being too aggressive,” she said. “We just took on too much.”

That explanation won’t quiet the criticism. House Majority Leader Steny H. Hoyer, a Maryland Democrat and one of the authors of the 2002 law, is concerned that the commission “may have mishandled taxpayer-financed reports” and has called for hearings, said spokeswoman Stacey Farnen Bernards. Feinstein’s committee already has an oversight hearing tentatively scheduled for June.

Voting rights groups are highly suspicious of the commission’s actions, though there is no evidence the administration interfered with the reports. Jonah Goldman, director of the Lawyers’ Committee for Civil Rights Under Law, said it “just seems a little too convenient that there’s no political motive” given that the administration reportedly fired some U.S. attorneys because they were not aggressive in prosecuting alleged voter fraud.

And even those who don’t subscribe to a political conspiracy find fault with the commission’s handling of the reports. “I think they’re just trying to avoid controversy, and trying to avoid controversy is not what we need right now,” said Richard L. Hasen, an election-law expert at Loyola Law School in Los Angeles. “With all the problems we’re having with elections in this country, we need bold leadership, and they’re not providing it.”

### Congressional Alarm Bells

Davidson insists that the commission doesn’t shy away from controversial subjects. “That’s our job,” she said. Indeed, the law spells out a list of reports the commission is supposed to produce, and they touch on nearly every hot-button election issue imaginable: ballot designs, voter registration methods, recount procedures, the handling of misinformation about election times and locations, and even proposals to make Election Day a holiday.

Much of the commission’s other work is advice and testing of voting systems. In 2005, it published

guidelines that dealt with security issues, paper audit trails, and accommodations for voters with disabilities. And last year, it started testing and certifying voting systems in preparation for the 2008 election.

Still, the way the voter fraud and identification reports were handled and the possibility that the Justice Department influenced the reports have alarmed some members of Congress.

That issue won't be settled until the hearings have been held and the inspector general's office has issued its report. But the back story of one incident with the voter fraud report – in which two Justice officials secured changes to the summaries of their interviews for the report – suggests the department was more than a bystander in the voter fraud study.

In the appendix, which summarizes all of the expert interviews conducted for the fraud report, two Justice officials' interviews are included: Craig Donsanto, director of the Election Crimes Branch of the Public Integrity Section, and John Tanner, chief of the Civil Rights Division's Voting Section. In both cases, a footnote declares that "this interviewee did not agree with the consultants' interpretation of his interview comments" and that the commission made "clarifying edits." No such note accompanies any of the other expert interviews.

Donsanto got to see the summary of his interview because he was a technical adviser to the working group. He thought the summary erroneously implied that his unit didn't pursue systematic fraud schemes anymore, only individual cases like voting by felons and non-citizens. He worried that civil rights groups would think their constituencies were being singled out. Peggy Sims, an election research specialist at the commission who managed the project, agreed and had it changed.

Tanner took issue with the suggestion that he had said the Department of Justice wasn't pursuing voter-suppression cases anymore, and provided examples of cases where it was doing just that. His remarks were corrected.

Sims said that neither Donsanto nor Tanner got to weigh in on the entire report before it was released.

Such controversies are inevitable given that some lawmakers are worried about political influence on the commission and others are concerned it might grow too powerful. Elections are emotional, and even a bipartisan panel will have disagreements. When the four commissioners tried to revisit the Arizona decision, for instance, they deadlocked on party lines, something that also happens periodically to the bipartisan Federal Election Commission.

But the commission can go a long way, voting rights groups say, simply by operating with more transparency and establishing more written procedures for making decisions. "It is a relatively young agency," said Wendy R. Weiser of the Brennan Center for Justice at the New York University School of Law. "But they've been around long enough that this is no longer acceptable."

Davidson said more transparency and better procedures are her goals as well. "Definitely I hear what Congress is saying," she said. "We're a bipartisan commission, and we want to do the right thing." Now, in a year when lawmakers say they're trying to improve oversight, it's up to Congress to decide whether it is interested enough in its own creation to help the commissioners do the right thing.

FOR FURTHER READING: Voter fraud and U.S. attorneys, CQ Weekly, p. 968; commission's creation, 2003 CQ Weekly, p. 3059; election law (PL 107-252), 2002 Almanac, p. 14-3; motor-voter law (PL 103-31), 1993 Almanac, p. 199. Source: CQ Weekly. The definitive source for news about Congress.

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026843



## Who's Who on the Commission

The Election Assistance Commission was created in 2002 to help states comply with federal rules and to set standards and distribute grants for voting equipment. Its members, two from each party, are nominated by the president and confirmed by the Senate to four-year terms that are renewable once.



**Donetta L. Davidson** (Republican) was appointed in 2005 and is the current chairwoman. She had been Colorado's secretary of state for six years and before that state elections director and a county clerk in suburban Denver. Her term expires in December.



**Gracia M. Hillman** (Democrat) is a longtime figure in the voting rights movement and a former executive director of the League of Women Voters. She was president of a Washington consulting company when appointed in 2003. Her term expired in 2005, but she is serving until a replacement is named.



**Caroline C. Hunter** (Republican) was deputy director of the White House Office of Public Liaison when President Bush appointed her in 2007. She is a former attorney for the Republican National Committee and ombudsman for the Bureau of Citizenship and Immigration Services. Her term expires in February 2011.



**Rosemary E. Rodriguez** (Democrat) was finishing her third year on the Denver City Council when she was appointed in 2007 to replace Ray Martinez, who resigned. She had previously been Denver's city clerk and director of boards and commissions for the mayor. Her term expires in December.

Jeannie Layson/EAC/GOV  
04/17/2007 04:56 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc EAC Staff

bcc

Subject Today's press inquiries (04-17-07)

1. I spoke with St. Louis editorial board members Christine Bertelson and Kevin Korrigan regarding an editorial that ran today, asserting that we'd worked on the vote fraud/voter intimidation study for five years, and that the administration/White House edited the report. I told them both of these assertions were false, and I requested a correction. I gave them the details about how this project was conceived and managed. I explained that 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. I said the assertion that the administration edited the document was false, and said that at no point in the process did the administration play any role. I also pointed out that the chair requested the IG to fully review the matter. They are going to run a correction. The editorial follows.

#### **Snipe hunting in Jeff City**

*Tuesday, Apr. 17 2007*

The Missouri Legislature's dogged efforts to crack down on voter fraud call to mind the hallowed tradition of the snipe hunt.

In a snipe hunt, gullible kids are taken out to the woods, handed sticks and gunny sacks and told to track down the elusive snipe. Meanwhile, their pals, who know a snipe is a bird of marsh and shore generally found nowhere near the woods, yuck it up.

Voter fraud is about as rare as snipe in most parts of the country, including Missouri. As evidence of that we have the testimony of (a) a five-year study by the federal Election Assistance Commission; (b) a report from the Missouri Secretary of State showing nobody in the state tried to vote with a fake I.D. in 2006; (c) Department of Justice statistics showing only 86 people were convicted of voter fraud-related crimes in the last five years, many of them on trivial errors; and (d) a federal judge's ruling last week that the justice department had failed to demonstrate that voter fraud had occurred in Missouri last year.

Undaunted by these facts, Republicans in the Legislature lurk about like Elmer Fudd with their gunny sacks and sticks, promoting bills to require voters to present photo identification before they're allowed to cast a ballot. They passed such a bill last year, but the courts threw it out as unfair to those who couldn't afford the cost and hassle involved in getting a photo I.D. card.

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This year's versions of the photo I.D. bills would allow voters without photo I.D. to cast "provisional ballots," which may or may not get counted. So, despite the fact that a photo I.D. requirement would disenfranchise many voters in the cause of solving a problem that doesn't exist, the Missouri House could pass such a bill this week.

Evidence continues to mount that the hunt master for the national voter I.D. snipe hunt is none other than Karl Rove, President George W. Bush's deputy chief of staff and political guru. As The New York Times suggested Sunday, "The more we learn about the White House purge of United States attorneys, the more a single thread runs through it: the Bush administration's campaign to transform the minor problem of voter fraud into a supposed national scourge."

Not only did the administration suggest that some of the eight fired prosecutors had been insufficiently aggressive in pursuing voter fraud cases, it changed the wording of the Election Assistance Commission's findings on the voter fraud issue. What originally read, "there is widespread but not unanimous agreement that there is little polling place fraud" became "there is a great deal of debate on the pervasiveness of fraud."

Moreover, the release of the commission's report was delayed for nine months, during which period eight states, including Missouri, dealt with voter I.D. laws. Since the 3 percent to 4 percent of the electorate who don't have photo I.D.s tend to be poor, disabled or elderly voters, suppressing their vote would tend to help Republican candidates.

Investigators looking for evidence of fraud need look no further than the e-mail messages emanating from Mr. Rove's offices. Alas, thousands, perhaps millions, of those messages are now "missing." Perhaps Attorney General Alberto Gonzales will shed some light on the problem when his testimony before the Senate Judiciary Committee is rescheduled. In the meantime, Missouri lawmakers should put down the sticks and gunny sacks and back slowly out of the woods before their constituents realize they've been snookered, too.

Jeannie Layson  
U.S. Election Assistance Commission  
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Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

026846

Bryan Whitener/EAC/GOV  
04/19/2007 06:19 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-19-07, Thurs )

Commissioners:

Jeannie issued the following media inquiries log for today:

(1) I asked Rick Hasen of Election Law Blog to please post info about our Spanish language glossary of election terms, and he did.

(2) Eliza Carney, National Journal columnist, interviewed the chair today about the recent challenges EAC has encountered. She asked about CIBER, and the chair explained the interim process, the way we modeled our interim process after NVLAP. Eliza wanted to know what EAC was doing to address some of the criticism, and the chair talked about the bipartisan subcommittees and her request to the IG. She said Rep. Hinchey told her the only reason we released the voter ID report was because he asked for it at a hearing. The chair pointed out that in Feb. she asked staff to bring the commission recommendations for wrapping it up w/n 30 days. She asked the chair about the voter fraud report, and the chair said staff reviewed it for accuracy, as we have a responsibility to do. I sent her background info on the history of certification and the voluntary nature of the guidelines and our certification program. She also asked for info about our budgets, and our employee cap, which I sent to her.

(3) David Nather of Congressional Quarterly interviewed the chair about how the agency is standing up against all of the recent criticism. She talked about the bipartisan subcommittees and the IG review request. She said if the IG identifies things that need to be changed, we'll change them. He had emails b/w Peggy and Craig Donsanto about discrepancies with his interview. Peggy talked with the reporter about the issue. She explained that she sat in on the interview, and that she agreed with Craig that they had gotten something wrong -- they stated that DOJ had moved from focusing on fraud conspiracies to individual cases. Peg and Craig agreed that what he'd said was that DOJ used to only focus on conspiracies, now they also focus on individual cases too. Peg said Craig learned of the inaccurate portrayal during his role as the technical advisor to the working group. She said none of the people interviewed were given the opportunity to review the summaries. Craig found out about his through the working group, and Tanner learned about his interview summary after the boards were briefed on the project in May. He asked me if we were finished with the following research projects: -- ballot designs, voter registration methods, recount procedures, misinformation about election times and locations, and proposals to make election day a holiday. I told him all of that research is underway. HAVA-mandated research that's been completed includes Election Crimes (vote fraud), the 2004 Uniformed and Overseas Citizens Absentee Voting Act Survey, and the 2003-2004 National Voter Registration Act Survey. We've also released the 2004 Election Day Survey. And we've issued a series of quick management start guides to election officials throughout the nation, addressing voting system security, introducing a new voting system, ballot preparation, and poll workers. Yesterday, the commission adopted the Spanish language glossary of election terms, the first project released under EAC's Language Accessibility Program, which consists of working groups comprised of local election officials, national advocacy groups and research and public policy organizations to advise the commission on how to best meet language accessibility requirements. Next we will translate the glossary in five Asian languages. We also are working on a Legal Resources Clearinghouse, which will be a web-based database containing statutes, regulations, rules, and fed. and state court decisions related to election administration. It will provide the public and election officials a central location to conduct election administration research. I pointed out to him that we have already met two of the biggest HAVA mandates -- VVSG and the certification program. He asked for the ages of all the commissioners, and I gave it him.

026847

(4) Philip Burrowes of Congressional Quarterly asked for photos of all commissioners and their length of terms which we provided. He also asked for the names of the members of Congress who made recommendations to the White House regarding appointments. We provided the text of HAVA regarding recommendations and said he would need to ask the White House for names.

(5) Marc Songini of Computer World had the following questions, and my responses follow.

A. Is the EAC doing enough to strengthen voluntary voting system guidelines and voting system certification? EAC, the National Institute of Science and Technology (NIST), and the Technical Guidelines Development Committee (TGDC) have already completed an initial update of the 2002 standards. First, it is important to note that these guidelines are voluntary, and it is up to states whether to adopt them. The 2005 guidelines update and augment the 2002 voting system standards, as required by HAVA, to address advancements in election practices and computer technologies. After December of this year, voting systems will no longer be tested against the 2002 standards. The major changes from 2002 to 2005 fall in the areas of accessibility and usability. The changes made to these sections include a usability section which was not in the 2002 standards and increase the number of accessibility requirements from 29 to 120 and increase language accessibility requirements. The 2005 guidelines also created greater security requirements based on the new technology used in the voting machines, increasing standards in the areas of data transmission and voter verification. The 2005 guidelines also include a section on conformance testing that was not in the previous standards and included more requirements regarding wireless components. It also provides an overview of the requirements for Independent Verification systems, including requirements for a voter verified paper audit trail for states that require this feature for their voting systems. The VVSG includes the requirement that all voting system vendors submit software to a national repository, which will allow local election officials to make sure the voting system software they purchase is the same software that was certified. In addition, NIST and the TGDC are working on the next iteration of guidelines as we speak, and have said they expect to provide their recommendations to EAC by this summer. You may also want to contact Jan Kosko at NIST. Her number is 301-975-2767.

B. Regarding EAC resources, please see our operating budgets below. Note that the National Institute of Standards and Technology (NIST) receives a pass through in our budget, so that amount is not part of EAC's operating budget.

FY 2004 -- \$1.2 million

FY 2005 -- \$13.8 million (\$2.8 million of which was a pass through for NIST)

FY 2006 -- \$14 million (\$2.8 million of which was a pass through for NIST)

FY 2007 -- \$16.2 million (\$4.95 million of which was a pass through for NIST)

C. Regarding your inquiry about what EAC is doing to strengthen the certification program, the most important issue is that it is now a role the federal government has assumed for the very first time. In the past, this was done by the National Association of State Election Directors (NASSED) on a volunteer basis. NASSED is not a federal agency, and it did not receive any federal funds in its efforts. EAC made the decision not to grandfather any systems certified by NASSED. So any system seeking an EAC certification must be tested end to end. Under EAC's program, which is laid out in our Testing and Certification Program Manual, the federal government will not only operate a more rigorous testing and certification process, it will also have a Quality Monitoring Program in place. For the first time manufacturers will be held accountable through not only this program, but also under the decertification process, which would be the ultimate sanction against a manufacturer. If a system is decertified, the manufacturer may not represent the system as being certified, may not label the system as certified, and the system will be removed from the EAC's list of certified voting systems. Election officials will be notified about the decertification. The Quality Monitoring Program will allow election officials to report anomalies. EAC will visit facilities for quality control purposes, and we will perform site reviews per states' requests. In addition, this program will be transparent. Information about the process and the manufacturers and test labs that participate will be posted on the agency's website. Go [here](#) for the list of documents and information we will provide. In addition to holding the manufacturers accountable, any federal employees involved with this program will have their financial holdings reviewed for potential conflicts of interest.

###

026848

Jeannie Layson/EAC/GOV  
04/16/2007 03:18 PM

To EAC Personnel, fms.eacfabre@yahoo.com  
cc  
bcc  
Subject Chair requests internal review

History: This message has been forwarded.

Hello everyone,

I wanted to notify you that Chair Davidson, in agreement with the other three commissioners, has requested that our IG -- Curtis Crider -- conduct a review of our contracting procedures surrounding the voter identification and vote fraud and voter intimidation research projects. Very shortly, I will distribute her request along with a press release to the media and to all our stakeholders. However, she wanted to make sure the staff was fully informed about this action before we make this news public.

The chair's request, the press release and all of the materials referenced in her request will be available on the home page under Announcements very shortly. Please direct anyone with questions about this action to the website. And let me know if you have questions about any of this information or if I can be of assistance answering questions from the public about this issue.

The chair wants to convey to everyone how much she appreciates your hard work, and that she is confident in our ability to work with Curtis to resolve this issue. Tom would like staff to join him at 3:30 today in the large conf. room upstairs to answer any questions you have.



2007-13 ( 4-16-07 ) EAC Requests Review of Voter ID, Fraud & Intimidation Research Projects.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

026849



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.

*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 E. Rodriguez, Caroline Hunter and Gracia Hillman.*

###

026850



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.

**United States Senate**  
**WASHINGTON, DC 20510**

April 12, 2007

The Honorable Donetta Davidson  
Chairman  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, DC 20005

Dear Commissioner Davidson:

We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.

While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.

On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.

On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a \$560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.

Commissioner Davidson

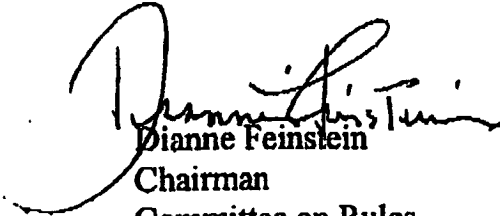
- 2 -

April 12, 2007


It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,



Dianne Feinstein  
Chairman  
Committee on Rules  
and Administration



Richard J. Durbin  
Chairman  
Subcommittee on Financial  
Services and General  
Government  
Committee on Appropriations

We request information and documentation from the Commission that answer the following questions:

**COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

#### **COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.

4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

**COMMITTEE ON THE JUDICIARY**

- CHAIR — SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
- SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY
- SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

**COMMITTEE ON HOMELAND SECURITY**

- SUBCOMMITTEE ON BORDER, MARITIME AND GLOBAL COUNTERTERRORISM
- SUBCOMMITTEE ON EMERGING THREATS, CYBERSECURITY, AND SCIENCE AND TECHNOLOGY

**COMMITTEE ON HOUSE ADMINISTRATION**

- CHAIR — SUBCOMMITTEE ON ELECTIONS

CHAIR, CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION

**Congress of the United States**  
**House of Representatives**  
 Washington, DC 20515-0516

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CO-CHAIR, CONGRESSIONAL HAZARDS CAUCUS

CO-CHAIR, BIPARTISAN CONGRESSIONAL REFUGEE CAUCUS

CO-CHAIR, CONGRESSIONAL VIETNAM CAUCUS

April 12, 2007

Chairwoman Donetta Davidson  
 United States Election Assistance Commission  
 1225 New York Avenue N.W., Suite 1100  
 Washington, DC 20005

Dear Chairwoman Davidson:

As Chairwoman of the Committee on House Administration Subcommittee on Elections, which has oversight over the Election Assistance Commission, I was alarmed at what appears to be an emerging pattern by the EAC to hold off on publicly releasing reports as well as modifying reports that are released. Two recent instances have brought to light the increased politicalization of the EAC and this lack of transparency.

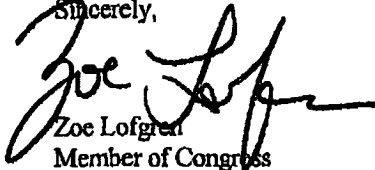
First, the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released. The EAC released report "Election Crimes: An Initial Review and Recommendations for Future Study" does not accurately reflect the research in the original report "Voting Fraud and Voter Intimidation."

Second, in addition to this report on voter fraud and intimidation, the EAC recently released a report by The Eagleton Institute of Politics at Rutgers University on voter identification. Again, the EAC did not endorse the report, citing methodological concerns, and only released it after pressure from Congress.

The EAC is charged with conducting nonpartisan research and to advise policy makers. How are we to rely on advice if instead of full and accurate reporting, we are provided an inaccurate modified version which negates clear evidence to the contrary in the original research? I am outraged that the election process is being threatened by a lack of transparency and limited discussion.

In order to preempt any further problems with the release of reports from the EAC, I request all versions of the Absentee Ballot report and the Military and Overseas report, as well as any other overdue reports, including supporting documents and research, be provided to my office by close of business Monday, April 16, 2007. These reports are overdue and I want to ensure that the delay is no way related to what appears to be an ongoing problem of politicalization of the EAC.

Sincerely,

  
 Zoe Lofgren  
 Member of Congress



For Immediate Release

April 11, 2007

## **Hinchey, Serrano Urge Non-Partisanship, Greater Transparency at Election Assistance Commission**

**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 a 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 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.

025860



Congressman José E. Serrano  
Representing the Sixteenth District of New York

## PRESS RELEASE

MEDIA CONTACT:  
**Philip Schmidt** (202)  
225-4361

FOR IMMEDIATE  
RELEASE:  
Apr 11, 2007

# SERRANO, HINCHEY URGE NON-PARTISANSHIP, GREATER TRANSPARENCY AT ELECTION ASSISTANCE COMMISSION

Washington, DC – April 11, 2007 – 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 a 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 some of them. The EAC must never limit discussion and debate.”

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025861

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###

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Email: <a href="mailto:jserrano@mail.house.gov">jserrano@mail.house.gov</a>	

026362

Juliet E. Hodgkins/EAC/GOV  
04/15/2007 05:55 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.  
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Eileen L. Kuala/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Stephanie Wofford, "Fabre, Stacie"  
bcc

Subject Draft letter to Congresswoman Lofgren

History: This message has been forwarded

Commissioners,

Attached is a draft letter to respond to Congresswoman Lofgren's letter regarding the voting fraud and voter intimidation and voter identification studies as well as requesting information regarding our studies on Free Absentee Ballot Postage and Military and Overseas Voting (Internet Voting). I have not attached the appendixes as I have those in hard copy and will be assembling them in the morning into the appendixes. Congresswoman Lofgren has asked for this information by COB Monday. As such, I would appreciate your comments as early as possible tomorrow, but no later than 2:00 p.m. -- so that I can consolidate the comments and get the information to the Congresswoman's office by her deadline.

Thanks in advance for your quick review of this letter. Please let me know if you have any questions.



letter to Congresswoman Lofgren re studies - draft - 041507.doc

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

026863

April 13, 2007

Congresswoman Zoe Lofgren, Chair  
House Administration Committee  
Subcommittee on Elections  
102 Cannon House Office Building  
Washington, DC 20515

**Via Hand Delivery**

RE: EAC Research Efforts

Dear Congresswoman Lofgren:

Thank you for your letter of April 12, 2007 and the opportunity to provide valuable information about the research efforts being undertaken by the U.S. Election Assistance Commission. Your letter referenced four studies that have been or are being conducted by EAC through contracts and contracted employees. I will address each in turn, below.

**Voting Fraud and Voter Intimidation Study**

The first study about which you inquired is the voting fraud and voter intimidation study. This study was conducted by contract employees of the EAC for the EAC. In the fall of 2005, EAC hired two contract employees to conduct an initial review of the existing information available about voting fraud and voter intimidation. From that review, the employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration.

EAC, as a Federal agency, is the policy and decision making body. Consultants, contractors and employees do not make policy for EAC. Their recommendations were only one part of a deliberative process that precedes any agency decision. The Freedom of Information Act, a Federal statute governing the release of documents to the public, creates an exemption to protect pre-decisional, draft documents.

The report requested by House Appropriations Committee is a draft, representing one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by contract employees in order to aid the EAC's Commissioners in their decisions regarding voting fraud and voter

intimidation. The contract employees had no personal interest in their submissions and had no agency decision-making authority. Each was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when the report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

In keeping with this concept, EAC reviews and vets all draft products or recommendations delivered by its consultants, contractors and employees. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voting fraud and intimidation report provided by the contracted employees. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and contained allegations that showed bias. EAC also found that the research provided by the contracted employees was a good body of data concerning the existing knowledge of voting fraud and intimidation. EAC staff developed a subsequent draft report to correct the problems mentioned above, to address the questions that this study sought to answer, and to address inconsistencies between the contracted employees' draft report and the research that was provided. The staff report included all of the contracted employees' and working group's recommendations. The staff report was adopted by EAC on December 7, 2007 during its public meeting and became the final and decisional report of the Commission on this issue. The final report as well as all of the underlying research conducted by the contracted employees are available on EAC's Web site, [www.eac.gov](http://www.eac.gov).

### **Voter Identification Study**

The second study about which you inquired was a study conducted by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. A draft report was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures." The stated objective of the contract was 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... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC

adoption.” Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

EAC reviewed and vetted of the draft document provided by Eagleton. Review of that document revealed data and analysis that caused EAC concern. 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>

On March 30, 2007, EAC decided not to adopt Eagleton’s study and not to issue an EAC report based upon this study. The Commission did release all of the material provided by Eagleton at that time. In addition, EAC voted to 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.
- 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.

### **Free Absentee Ballot Postage Study**

Pursuant to Section 246 of the Help America Vote Act of 2002 (HAVA), EAC was directed to study and produce a report on the feasibility and advisability of a program that would provide absentee ballots that could be returned by the voter postage-free. HAVA directed that this report be delivered one year after the passage of HAVA, that is not later than October 29, 2003.

EAC was not able to complete this study within the original deadline set forth in HAVA, but EAC currently has a pending research project to provide information for a report on this subject. On the deadline set forth in HAVA, EAC Commissioners had not yet been appointed and confirmed to fill their positions and to form the agency that is now EAC. After the formation of EAC in December 2003, Congress provided an appropriation for FY 2004 in the amount of \$1.2 million dollars, which did not include sufficient funding for research activities. EAC received operational funding including some funding for research in its FY 2005 budget. Thus, in FY 2005, EAC developed an issued a request for proposals for a research contract to study this issue. No responsible bidders responded to the request for proposals and the request was ultimately withdrawn by the Commission due to the failure to receive any responsible bids.

Because this research report was required by HAVA and the deadline for the completion of the project had passed, EAC issued a subsequent request for proposals in FY 2006. EAC received proposals and awarded a contract for the study of this issue. The statement of work for that project has been attached as Appendix "1" to this letter for your review and convenience. As you will see, the statement of work sets forth several requirements for the contractor, including conducting a survey of registered voters to gather information from them regarding their voting behavior and whether the implementation of a national program for free absentee ballot postage would change that behavior. The contractor was further asked to conduct a series of focus groups comprised of potential beneficiaries of free or reduced absentee ballot postage.

The EAC and its contractors are subject to the Paperwork Reduction Act (PRA) and thus all information collection instruments must be published prior to issuance to obtain public



comment regarding the questions asked, the necessity of the collection, and the burden that will be imposed on respondents. EAC published the survey instrument to be used as a part of this study in the Federal Register on November 14, 2006. See Federal Register, Vol. 71, No. 219, Page 66321. A copy of the Federal Register notice and request for comments is attached as Appendix "2" to this letter. In keeping with the PRA, a notice for comments to be provided to the Office of Management and Budget (OMB) was published in the Federal Register on January 23, 2007. See Federal Register, Vol. 72, No. 14, Page 2875. A copy of that notice is attached as Appendix "3" to this letter. In addition for your convenience a copy of the actual survey instrument has been attached as Appendix "4" to this letter.

In keeping with the statement of work, the contractor has also developed discussion guides for the focus groups that it has planned involving senior citizens, disabled voters, and low income voters. These guides have been attached as Appendix "5" to this letter. This research project requires coordination with the United States Postal Service (USPS) as implementation of such a program would undoubtedly have a significant impact on that agency. Through that participation, USPS has suggested that additional focus groups be added to the original work plan for this study. The contractor communicated that request to EAC and the proposal for additional working groups has been attached as Appendix "6" to this letter. EAC believes that these additional focus groups would be helpful for this research project and is working with the contracting officer on this contract to determine whether the contract can be amended to add these additional focus groups.

You will note from the attached work plan that this project has a current project completion date of November 1, 2007. See Attachment "7", Work Plan. Progress reports updating progress on the work plan are also attached as Appendix "7" to this letter. However, additional focus groups would require additional time to complete the proposed, expanded statement of work. See Attachment "6", Proposal for Adding Focus Groups to the Free/Reduced Postage for Absentee Ballots Research Project. Progress reports updating progress on the work plan are also attached as Appendix "7" to this letter.

### **Military and Overseas Voting Study**

Section 245 of HAVA directs EAC to study the risks and benefits of using the Internet to conduct voting. The only area in which this type of electronic technology has been used at all to administer voting is for military and overseas citizens. As such, EAC has focused on using that experience as instructive for the possibility of Internet voting on a larger scale.

This study was directed to be completed within 20 months of the passage of HAVA, or no later than June 30, 2004. EAC was unable to complete this study by the original deadline, but currently has a pending research project to provide information regarding the use of electronic means for voting in military and overseas citizen voting.

Much like the Free Absentee Ballot Postage Study, the majority of time allotted in the original deadline for research passed prior to the existence of EAC and during the time of its initial budget which did not allow for research spending. In FY 2005, EAC approached the Technical Guidelines Development Committee (TGDC), the Federal advisory committee that researches and proposes voting system standards to EAC, to provide guidelines on security, core requirements and usability requirements for the use of the Internet in voting. The TGDC declined to include these as a part of their recommendations for voting system guidelines. TGDC considered the possibility of using the Internet for voting too risky and further believed that any voting system, Internet-based or not, must conform to the standards established by EAC based upon their research and recommendation.

Following this set back, EAC opted to seek a contractor to provide research in this area. We first conferred with the Federal Voting Assistance Program of the Department of Defense that several years ago worked on a substantial project aimed at establishing Internet voting for military members. In those conversations, we learned that there are many obstacles at the state and local level to implementing Internet-based voting. Based on this information, EAC determined that the best course of action was to find out what the current state of readiness and willingness is among state and local election jurisdictions to implement Internet-based voting. We can only develop standards for an appropriate system if we know what needs that system will have to serve and what obstacles it will have to overcome. A request for proposals was issued in FY 2006 and a contract was awarded.

A copy of the statement of work for this study has been attached as Appendix "8" to this letter. As you will see, that statement tasks the contractor with conducting case studies of election jurisdictions with experience in this area, conducting a survey of military and overseas voters, and a conducting a conference on Internet voting. The contractor has developed an outline for their case studies. This outline has been attached as Appendix "9" to this letter. In addition, the contractor has developed and distributed a survey instrument in keeping with the emergency provisions of the PRA. A copy of that survey instrument is attached as Appendix "10" to this letter. The conference is planned for August 2007 in New Orleans. The progress reports from the contract showing their progress on completing tasks as set forth in the statement of work are attached as Appendix "11" to this letter.

Thank you for your requests and your interest in election administration. I trust that the information that we have provided will give you a complete picture of the status of the pending research projects about which you inquired as well as valuable information concerning EAC's previous research projects regarding voting fraud and voter intimidation and voter identification. However, if you have further questions, please do not hesitate to contact me.

Congresswoman Zoe Lofgren, Chair  
House Administration Subcommittee on Elections  
Page 7

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Sincerely,

Donetta Davidson  
Chair

Donetta L.  
Davidson/EAC/GOV  
04/13/2007 12:36 PM

To Elieen L. Kuala/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History: This message has been replied to

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Elieen L. Kuala  
----- Original Message -----

**From:** Elieen L. Kuala  
**Sent:** 04/12/2007 02:18 PM EDT  
**To:** Donetta Davidson  
**Subject:** Re: FOIA Request

I did a search through your emails with their names and I didn't find any. I don't have any either. However, I will check and see if we have any mailed correspondence hard copies.

Elle L.K. Kuala  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <[REDACTED]>

cc

Subject Re: FOIA Request

Elle, I don't think I have any emails from Job or Tova, but to be on the safe side would you double check

-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson

026871

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

**From:** Jeannie Layson  
**Sent:** 04/12/2007 08:38 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks; Eileen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener; stephanie.wolson@gmail.com  
**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  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

026872

Donetta L.  
Davidson/EAC/GOV  
04/14/2007 12:35 PM

To Elieen L. Kuala/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History: This message has been replied to.

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Elieen L. Kuala  
----- Original Message -----

**From:** Elieen L. Kuala  
**Sent:** 04/13/2007 02:00 PM EDT  
**To:** Donetta Davidson  
**Subject:** Re: FOIA Request

I checked all of our paper records and found nothing so I submitted our FOIA response to Jeannie.

Elle L.K. Kuala  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/13/2007 12:36 PM

To Elieen L. Kuala/EAC/GOV@EAC  
cc  
Subject Re: FOIA Request

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026873

Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
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Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/12/2007 01:33 PM

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cc

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026874

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)

026875



Donetta L.  
Davidson/EAC/GOV  
04/14/2007 10:00 PM

To: Elieen L. Kuala/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: FOIA Request

History: This message has been forwarded.

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Elieen L. Kuala  
----- Original Message -----

**From:** Elieen L. Kuala  
**Sent:** 04/14/2007 09:58 PM EDT  
**To:** Donetta Davidson  
**Subject:** Re: FOIA Request

Also I got your message and I will get to work on that tomorrow. I will email Tom and we can talk about what you want to write to Curtis.

Elle Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
(202) 566-2256  
[www.eac.gov](http://www.eac.gov)

-----  
Sent from my BlackBerry Wireless Handheld  
Donetta L. Davidson  
----- Original Message -----

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**To:** Elieen Kuala  
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Elle L.K. Kuala  
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026876

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Donetta L. Davidson/EAC/GOV

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cc  
Subject Re: FOIA Request 

026877

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[www.eac.gov](http://www.eac.gov)

026878

Margaret Sims/EAC/GOV  
04/13/2007 11:57 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Elieen L.  
bcc

Subject Re: FOR YOUR REVIEW: Draft letter to Bds

History:

This message has been forwarded

Jeannie:

I noticed the following factual errors in the draft letter, which we may want to correct:

- The consultants were asked to do 4 things (not 2): (1) provide a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; (2) perform background research (including Federal and State administrative and case law review) and identify current activities of key government agencies, civic and advocacy organizations regarding voting fraud and voter intimidation; (3) establish and convene 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 to review the definition of what constitutes voting fraud and voter intimidation and the results of the background research, and to make recommendations on future EAC research on the topic; and (4) report to EAC on the preliminary research effort, working group deliberations, and recommendations for future research.
- The project working group met and offered its feedback and recommendations just before the 2006 meetings of the Standards and Advisory Boards, but after the May 2006 status report had been prepared. EAC staff orally updated the boards on the results of this meeting.

--- Peggy

Jeannie Layson/EAC/GOV



Jeannie Layson/EAC/GOV

04/13/2007 10:12 AM

To Donetta L. Davidson/EAC/GOV, ghilman@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, Sheila A.  
Banks/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC,  
Stephanie Wolson/EAC/GOV@EAC,

Subject FOR YOUR REVIEW: Draft letter to Bds

Commissioners,

We attempted to capture your edits in this version. Please let me know if this is what you had in mind. Also, take note that there is still pending decision regarding the release of the draft, which is why the related sentence is highlighted. Thank you.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100

025879

Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)



- AdvBdsletterDRAFT.doc

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project that was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries of the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at both public meetings of the Standards Board and Board of Advisors. Each group provided feedback on the progress of the study and the direction that it should take. Following those meetings, the employees convened a working group that likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration. EAC adopted a final report on voting fraud and voter intimidation, *Election Crimes: An Initial Review and Recommendations for Future Study*, in December 2006.

After the release of EAC's final report there was some debate about whether EAC should release the draft version provided by our contracted employees. The Board of Advisors considered, but did not pass, a resolution urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, and the committee released the draft report this week.

There has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in the final report. After receiving the information from the consultants, EAC conducted due diligence to make sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review, we

closely examined any claims regarding existing voter fraud and intimidation or the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

The consultants interviewed 24 people with experience in these issues. As you will see in the consultants' draft, they reached conclusions in their summaries that were based solely on these interviews, not on the entire body of work they collected. While individual accounts are certainly useful and instruct us on what issues to examine in moving forward, we did not feel these interviews provided the kind of extensive data upon which to draw these conclusions.

We understand that the topics of voter fraud and voter intimidation are hotly debated and sometimes divisive. We assure you that the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility and desire to issue data and findings that EAC could stand firmly behind and defend.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We will also review our contracting policy and internal procedures to make sure consultants provide data that can be fully supported and substantiated. We will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.

We take input from our advisory boards, Congress, and the public very seriously, and we pledge to you that we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Thank you for your service and for your continued commitment to the election process. We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

We have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

Juliet E. Hodgkins/EAC/GOV  
04/13/2007 09:19 AM

To Elieen L. Kuala/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: First cut at letter to Zoe Lofgren

History:  This message has been forwarded

Elle,

would you fax this to donetta?




letter to Congresswoman Lofgren re studies - draft.doc

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 04/13/2007 09:18 AM —

Donetta L.  
Davidson/EAC/GOV  
04/13/2007 08:50 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: First cut at letter to Zoe Lofgren 

Julie. Could you fax the Zoe lett to 3037415861. Thanks

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/12/2007 06:19 PM EDT  
**To:** Donetta Davidson  
**Subject:** First cut at letter to Zoe Lofgren

Donetta,

I have attached a draft of a letter that we might use to respond to the request from Zoe Lofgren. I wanted to get it to you for you to start reviewing. It is rather lengthy. It also assumes that we are not going to release the fraud and intimidation report (a matter which came under some debate this afternoon). If that decision changes, I will have to alter the letter. You will also note that there are a number of blanks in the document, which I will fill in as soon as I have the information from Karen.

026883



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

026884

April 13, 2007

Congresswoman Zoe Lofgren, Chair  
House Administration Committee  
Subcommittee on Elections  
102 Cannon House Office Building  
Washington, DC 20515

**Via Hand Delivery**

RE: EAC Research Efforts

Dear Congresswoman Lofgren:

Thank you for your letter of April 12, 2007 and the opportunity to provide valuable information about the research efforts being undertaken by the U.S. Election Assistance Commission. Your letter referenced four studies that have been or are being conducted by EAC through contracts and contracted employees. I will address each in turn, below.

**Voting Fraud and Voter Intimidation Study**

The first study about which you inquired is the voting fraud and voter intimidation study. This study was conducted by contract employees of the EAC for the EAC. In the fall of 2005, EAC hired two contract employees to conduct an initial review of the existing information available about voting fraud and voter intimidation. From that review, the employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were reviewed by the contract employees. In addition, they provided a draft report for EAC's review and consideration.

EAC, as a Federal agency, is the policy and decision making body. Consultants, contractors and employees do not make policy for EAC. Their recommendations are only one part of a deliberative process that precedes any agency decision. The Freedom of Information Act, a Federal statute governing the release of documents to the public, creates an exemption to protect pre-decisional, draft documents.

As you may know, the deliberative process privilege protects intra-agency documents that are (1) pre-decisional 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 or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and

contractors (“consultants”) constitute intra-agency documents.<sup>1</sup> This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.<sup>2</sup> The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.<sup>3</sup> Ultimately, deliberative 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.<sup>4</sup>

The report requested by House Appropriations Committee is a draft, representing one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by contract employees in order to aid the EAC’s Commissioners in their decisions regarding voting fraud and voter intimidation. The contract employees had no personal interest in their submissions and had no agency decision-making authority. Each was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when the report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The determination of this document as predecisional is born out in the facts surrounding the project at issue, including the contract documents that gave rise to research and writing of this draft report. First, the voter fraud and intimidation study that was requested is a draft of a final document that has already been released after being vetted by staff and approved by the EAC Commissioners. It is available in its final form on EAC’s Web site, [www.eac.gov](http://www.eac.gov). The draft document at issue was created by two contract employees hired pursuant to 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 were 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. As stated by their contracts, 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.”

---

<sup>1</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

<sup>2</sup> Klamath, at 10.

<sup>3</sup> Hoover, 611 F.2d at 1138.

<sup>4</sup> NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

Moreover, the contracts clearly forbid the consultants from releasing the draft they created consistent with the privilege covering the draft report. The contract states

All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

Finally, the purpose or subject of the draft report at issue was to make an EAC determination on how voter fraud should be studied by the agency. This was to be done by (1) assessing the nature and quality of the information that presently exists on the subject matter, (2) defining the terms and scope of EAC study as proposed by HAVA, (3) determining what is to be studied and (4) determining how it is to be studied. In addition, the Consultants were asked to develop a definition of the phrases "voting fraud" and "voter intimidation."

In keeping with this concept, EAC reviews and vets all draft products or recommendations delivered by its consultants, contractors and employees. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voter fraud and intimidation report provided by the contracted employees. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and contained allegations that showed bias. EAC also found that the research provided by the contracted employees was a good body of data concerning the existing knowledge of voting fraud and intimidation. EAC staff developed a subsequent draft report to correct the problems mentioned above, to address the questions that this study sought to answer, and to address inconsistencies between the contracted employees' draft report and the research that was provided. The staff report included all of the contracted employees' and working group's recommendations. The staff report was adopted by EAC on December 7, 2007 during its public meeting and became the final and decisional report of the Commission on this issue. The final report as well as all of the underlying research conducted by the contracted employees are available on EAC's Web site, [www.eac.gov](http://www.eac.gov).

EAC understands and appreciates that the a request from a Congressional committee is exempt from the provisions of FOIA, and as such, EAC provided the draft document despite the fact that the deliberative process exemption clearly applies to its contents.

### **Voter Identification Study**

The second study about which you inquired was a study conducted by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. A draft report was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures." The stated objective of the contract was 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... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

EAC reviewed and vetted of the draft document provided by Eagleton. Review of that document revealed data and analysis that caused EAC concern. 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>

On March 30, 2007, EAC decided not to adopt Eagleton's study and not to issue an EAC report based upon this study. The Commission did release all of the material provided by Eagleton at that time. In addition, EAC voted to 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.
- 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.

#### **Free Absentee Ballot Postage Study**

Pursuant to Section 246 of the Help America Vote Act of 2002 (HAVA), EAC was directed to study and produce a report on the feasibility and advisability of a program that would provide absentee ballots that could be returned by the voter postage-free. HAVA directed that this report be delivered one year after the passage of HAVA, that is not later than October 29, 2003. On that date, EAC Commissioners had not yet been appointed and confirmed to fill their positions and to form the agency that is now EAC.

After the formation of EAC in December 2003, Congress provided an appropriation for FY 2004 in the amount of \$1.2 million dollars, which did not include sufficient funding for research activities. EAC received operational funding including some funding for research in its FY 2005 budget. Thus, in FY 2005, EAC developed an issued a request for proposals for a research contract to study this issue. No responsible bidders responded to the request for proposals. As such, EAC issued a subsequent request for

proposals in FY 2006. EAC received proposals and awarded a contract for the study of this issue. The work plan for this study shows that EAC expects to receive a final product from the contractor around \_\_\_\_\_. Documents related to this study including \_\_\_\_\_ are attached as Appendix "1" to this letter.

### **Military and Overseas Voting Study**

Section 245 of HAVA directs EAC to study the risks and benefits of using the Internet to conduct voting. The only area in which this type of technology has been used at all to administer elections is for military and overseas citizens. As such, EAC has focused on using that experience as instructive for the possibility of Internet voting on a larger scale.

This study was directed to be completed within 20 months of the passage of HAVA, or no later than June 30, 2004. Again, the majority of this period for research passed prior to the existence of EAC and during the time of its initial budget which did not allow for research spending. In FY 2005, EAC approached the Technical Guidelines Development Committee (TGDC), the Federal advisory committee that researches and proposes voting system standards to EAC, to provide guidelines on security, core requirements and usability requirements for the use of the Internet in voting. The TGDC declined to include these as a part of their recommendations for voting system guidelines. TGDC considered the possibility of using the Internet for voting too risky and further believed that any voting system, Internet-based or not, must conform to the standards established by EAC based upon their research and recommendation.

Following this set back, EAC opted to seek a contractor to provide research in this area. We first conferred with the Federal Voting Assistance Program of the Department of Defense that several years ago worked on a substantial project aimed at establishing Internet voting for military members. In those conversations, we learned that there are many obstacles at the state and local level to implementing Internet-based voting. Based on this information, EAC determined that the best course of action was to find out what the current state of readiness and willingness is amongst state and local election jurisdictions to implement Internet-based voting. We can only develop standards for an appropriate system if we know what needs that system will have to serve and what obstacles it will have to overcome. A request for proposals was issued in FY 2006 and a contract was awarded. The work plan for that contract shows that a product from the contractor should be available to EAC around \_\_\_\_\_. Documents related to ongoing work on this study including \_\_\_\_\_ are attached as Appendix "2" to this letter.

Thank you for your requests and your interest in election administration. If you have further questions, please do not hesitate to contact me.

Sincerely,

Donetta Davidson  
Chair



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.

cc

bcc

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  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

026892

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

History: This message has been forwarded.

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, ghilman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, jthompson@eac.gov,  
klyndyson@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, ~~stephen@eac.gov~~  
cc  
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Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW

026893

Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

Donetta L.  
Davidson/EAC/GOV  
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc  
bcc  
Subject Re: FOIA Request

History: This message has been replied to.

Elle, I don't think I have any emails from Job or Tova, but to be on the safe side would you double check

-----  
Sent from my BlackBerry Wireless Handheld

Jeannie Layson

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

**From:** Jeannie Layson  
**Sent:** 04/12/2007 08:38 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks;  
Elieen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener;  
stephanie.wolson@gmail.com  
**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:

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Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

026895

Bryan Whitener/EAC/GOV  
04/11/2007 05:49 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-11-07, Wed )

Commissioners:

Today we had the following media inquiries:

(1) Commissioner Hillman was interviewed by Allison Keyes of NPR about the fraud report. Commissioner Hillman explained the scope of the contract and that we asked the contractors to do two things: define voter fraud and intimidation and provide recommendations for future study on these topics. The commissioner pointed out that we did not ask them for conclusions. The reporter asked if it was true that EAC was trying to suppress information about voter intimidation among minorities. The commissioner said she had worked all her life to prevent minorities from being intimidated at the polls, and that she was very anxious to embark upon a more expansive study on this very topic. The commissioner said the agency was transparent, and talked about our public meetings and the transcripts and testimony that were available to the public through our website.

**NOTE:** The interview will be aired repeatedly this evening on the five minute newscast at the top and bottom of the hour. To listen, tune into WAMU 88.5 FM American University Radio or Listen Live.

(2) Laura Strickler of CBS News wanted to know how much we spent on the fraud report and the voter ID report. We told her the fraud and intimidation research contract was for \$147,106, and the voter ID and provisional voting research contract was \$560,002. We explained that 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.

(3) Rich Wolfe of USA Today is working on a story on what states will have to do if Rush Holt's bill is enacted. He asked for details on what states and vendors are currently facing in order to transition from the 2002 to the 2005 voting system guidelines which we provided. Brian Hancock also spoke with him on background about the testing and certification program. Mr. Wolf wanted to know more details regarding the differences in the VSS 2002 and the VVSG 2005. Brian explained that the most significant changes related to accessibility and usability. His real concern was what practical effect the VVSG would have on elections 2008. We noted that more than the VVSG, the changes brought about by the EAC implementation of our Testing and Certification Program might have just as big an impact. We noted that we would not be grandfathering any NASED systems, and that if State law required EAC certification, the manufacturers would need to bring their voting systems through the EAC program for full testing. We also explained the implementation date of December 2005 and that as of that date, no systems could apply for testing to the 2002 VSS. We also made sure that Mr. Wolf understood that the EAC program was voluntary and that participation in the EAC certification program would be driven ultimately by the statutes, regulations or procedures in each of the States.

(4) Paul DeGregorio called to let us know he was interviewed by Adam Stichko of the St. Louis Post Dispatch about the fraud report. The reporter wanted to know if the reaction was a major setback for the agency. Paul said no, and that as EAC noted in its statement, it was going to improve its internal operations. He pointed out that sometimes EAC makes tough decisions that both sides of the aisle might not agree upon. But regardless, he said the agency has a responsibility to conduct due diligence, and make the tough decisions. He talked about what we have accomplished and the assistance we provide -- best practices, quick starts, VVSG and certification program.

(5) Meg Cox a freelance writer in Chicago asked what prompted EAC's Statement Regarding Research &

026896

Contracting Policies and whether something new happened in Congress to prompt the statement. We said that the statement contains the information.

(6) Ross Tuttle of Los Angeles was in town today and is working on a documentary series titled "The Freedom Files" which includes an episode on voting rights. He asked for EAC's statement in response to the NYT article on the release of the report. We sent him today's statement.

(7) Kat Zambon of electionline.org asked if other states have a similar partnership arrangement that the Secretary of State in Georgia has with Kennesaw State University to provide technical support for the state's voting machines, as well as outreach, education, ballot design, training and consultation. We said this is the only one that we are aware of.

(8) John Gideon of Voters Unite and Brad Blog had the following questions, and Jeannie's responses follow:

A. How does the EAC see their position as a "clearinghouse" of information as required by HAVA? We follow the mandates of HAVA regarding our responsibilities to conduct studies about election administration issues. The results of those studies make up the "clearinghouse." B. What responsibility does the EAC have with regard to warning states about what may be security vulnerabilities in specific voting systems? The EAC certification program will collect anomaly reports (go here to view the form), which we will then investigate and share with election officials and the public. C. Chairwoman Davidson has said that the EAC's middle name is "Assistance". How does ignoring potential security issues fit into that theme? As I mentioned above, monitoring anomalies is part of our certification program. As we've discussed before, the system you are referring to was not certified by EAC. If the manufacturer of this system wants an EAC certification for this system, it would have to successfully complete our certification process and adhere to all of its rules. EAC did not grandfather any systems already in use (meaning that we did not automatically issue certifications or transfer NASED qualifications to existing systems), including the one you referenced. Mr. Gideon replied that he was amazed that instead of answering the questions I conflated the certification of voting systems with a security vulnerability that is in existence across the country. He asserted this issue had nothing to do with the EAC certification program. I replied that the very fact that we have set up a system to track voting system anomalies is evidence that we think monitoring performance is very important. Again, as we have discussed many times, we did not certify this voting system. If it successfully completes EAC's certification program in the future, then it would be subject to our rules and conditions, and if a problem occurs we would notify the election community and the public.

###

Caroline C. Hunter/EAC/GOV  
04/11/2007 03:15 PM

To Jeannie Layson/EAC/GOV@EAC  
cc EAC Personnel, stephanie.wolson@gmail.com  
bcc  
Subject Re: EAC Statement

History This message has been forwarded

Rick Hasen  
Sent by:

04/11/2007 02:08 PM

To election-law

cc

Subje Indiana Secretary of State Rokita , the EAC Controversy, and the Incidence of  
ct Voter Fraud

<http://electionlawblog.org/archives/008228.html>

## Indiana Secretary of State Rokita , the EAC Controversy, and the Incidence of Voter Fraud

At a recent AEI-Brookings Election reform project event, I tangled a bit with Indiana Sec. of State Todd Rokita, including over the question whether the National Association of Secretaries of State will continue to take its unfortunate position that the EAC should be disbanded. Sec. Rokita has also been a strong supporter of voter identification laws, and his state's law has been subject to challenge in the Crawford case (see some of my analysis of the cert. possibilities for this case).

I did not realize until now (or perhaps I forgot) that Sec. Rokita was a member of the EAC's working group on vote fraud issues (see page 4 of pdf).

In the draft Seberov/Wang report leaked to the NY Times, Sec. of State Rokita is quoted as making some troubling remarks about conducting research into possible voter fraud, a key empirical question not only for the constitutional issue in *Crawford* but for election administration more generally. On page 28 of the report, Sec. Rokita is quoted as saying *both* that he believes the EAC should be in business of designing its own methodology for figuring out the incidence of voter fraud (rather than relying on existing assessments of the amount of fraud) *and* that the EAC should be "very careful" not to make the "wrong selection in the eyes of some group" of a political scientist to conduct such a study.

026898

In my view, there's no way that the EAC can design a sound methodology for a new study of voter fraud without the help of well-trained political scientists (or other social scientists well trained in appropriate research methods). It cannot subject the selection of such a political scientist to some kind of litmus test that excludes a good political scientist whose choice offends some interest group. This is part of the EAC's new pathology generally: it is afraid to release any data that might offend some group or take a side. (Under pressure, the EAC has now released that Eagleton/Moritz study on voter id and turnout that it has disowned).

In the end, I get the sense that no amount of evidence from the most eminent political scientist would convince Sec. Rokita that voter fraud at the polling place is not a major problem. From the report: "Mr. Rokita stated that, 'We're not sure that fraud at the polling place doesn't exist. We can't conclude that.'"

With the apparent demise of the American Center for Voting Rights (whose Thor Hearne was also in the EAC working group), Mr. Rokita appears to be fighting this battle alone on the EAC.

A more general lesson from the EAC controversy: There has been much writing in recent years by Chris Elmendorf, Heather Gerken, and myself on the use of election reform commissions and other devices to get changes in election administration rules. I fear that we will be studying the EAC's failures for many years to understand how *not* to engage in meaningful election administration reform.

--  
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Jeannie Layson/EAC/GOV



Jeannie Layson/EAC/GOV  
04/11/2007 10:58 AM

To EAC Personnel  
cc  
bcc  
Subject EAC Statement

History This message has been forwarded.

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 Commission**

**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

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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 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 was 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.

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[www.eac.gov](http://www.eac.gov)



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
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## **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.*

###

026901

Jeannie Layson/EAC/GOV  
04/10/2007 06:30 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc EAC Staff

bcc

Subject NEED YOUR APPROVAL: Statement for tomorrow

Commissioners,

As you know, the NYT will run an article tomorrow about EAC, and I think the focus will be on our recent stumbles, and it will speculate about what kind of role you've been assuming. I think it will portray us as under fire and struggling to regain our footing due to mismanagement and a late start. Also, tomorrow Hinchey and Serrano will release the draft fraud report along with a press release. I'd like to release and post the following statement as soon as their press release hits the street. Please let me know if you agree with this statement. Press log follows.

"EAC's policy is to thoroughly review any information submitted by contractors. That review involves due diligence to ensure that every report EAC adopts and issues is based on accurate information. We have a responsibility to take the time to get things right, and to make sure we can stand behind and each and every report we issue.

"However, we take input from Congress and the public very seriously, and we will take a hard look at the way we do business. If changes need to be made to increase transparency or speed up our review process, we will make those changes. EAC takes its responsibilities very seriously, and we will continue to move forward in a bipartisan way to improve the way America votes."

1. Ian Urbina of the NYT interviewed commissioners Davidson and Hillman about the fraud report. Both told him that EAC has a responsibility to make sure information we release is accurate, and that means conducting due diligence. The chair pointed out that we now have bi-partisan subcommittees to review research, budget issues and certification. She pointed out that we have a responsibility to take the time to get things right. Comm. Hillman answered his questions about specific passages, and explained why we made changes and how some of the comparisons he was making wasn't germane. Ray Martinez called and wanted us to know that he was also interviewed by Ian, and Ray told him he has always thought the agency should make final contractor reports available to the public. My responses to additional questions he posed follow:

A. In the draft on page 7, sec. bullet, it says "there is widespread but not unanimous." In the final, page one, it says "It is clear from the 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." Reason for the change from draft to final language -- The statement in the draft report is based on the interviews only, not on the entire body of research that was conducted. The latter statement in the final report is based upon the entire body of research, including the articles, books and cases which constitute the appendices. Also, the sentence from the draft is in the section that describes the interviews. The sentence in the final version is in the executive summary, which focuses on the entire project, not just the interviews.

B. In the draft on page 7 it says there is "evidence of some intimidation." In the final, page 7, it says "voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation." Reason for the change from draft to final language -- After reviewing all of the data provided by the consultants, EAC determined that there is little agreement as to what constitutes "voter intimidation." There is a difference between actionable intimidation (criminal) and civil issues and activities that are legal in both the criminal and civil context. No one is debating that there is some evidence of intimidation. The question is how intimidation is defined (criminal, civil, both, neither).

C. In the draft on page 7, second bullet, it says "most people believe that false registration forms have not resulted in fraud." This sentence wasn't supported by the entire body of research. Regarding the sentence in the final report: "For example, the interviewees largely agreed that absentee balloting is subject to the

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greatest proportion of fraudulent acts, following by voting buying and voter registration fraud." This language was taken from the first bullet on page seven of the draft report, which begins "There is virtually universal agreement that absentee ballot fraud is the biggest problem..."

D. In the draft, the consultants offered conclusions up front. In the final version, these conclusions either ended up in the appendices or elsewhere in the document. Why? EAC organized the content of the document in the manner that seemed most suitable. For instance, all of the recommendations (consultants' and working group's) are grouped together. We added language that reflected the commission's decision to adopt six of the recommendations.

E. Was this voted on in public? Was it unanimous? Three commissioners -- Paul DeGregorio, Gracia Hillman, and Donetta Davidson unanimously approved the final report at a public meeting on Dec. 7, 2006. Go here for details.

F. Who managed this project? Initially, the project was managed by EAC Dir. of Research Karen Lynn-Dyson, but early on the project was shifted to EAC Election Research Specialist Margaret Sims.

G. When did the work begin and when was it concluded? The consultants began work in Sept. 2005. They delivered sections of the draft document in phases (all dates are 2006). Interview conclusions were delivered to EAC in April; future suggestions in June; everything else (except next item) delivered in July; and literature review arrived in August.

H. What are the political affiliations of Karen and Margaret? Who appointed them? I don't know Karen's or Margaret's political affiliation. They are not political appointees -- they are federal employees, not appointed by the commission but hired by the executive director.

I. What about Julie Thompkins? Julie was appointed by the commission. Go here to read the press release about her appointment. The last person she worked for was a Republican, but Julie's appointment to the EAC was not on a partisan basis. She was appointed by a unanimous vote of the full (four commissioners) commission.

J. Explain the circumstances surrounding the only commission vote that wasn't unanimous. HAVA gave EAC the mandate under the National Voter Registration Act (previously held by FEC) to develop a federal voter registration form that must be accepted and used by states covered under the Act. As part of that mandate, EAC routinely updates the state instructions on the form. Instructions provide information about voting rules and laws in the states.

Arizona requested a change to the federal form's state instructions reflecting Prop. 200. Staff routinely reviews and approves state requests regarding changes to the instructions. In this case, the executive director denied Arizona's request. Paul DeGregorio (R), who was EAC chair at the time, put the matter to a vote, proposing that the Commission accommodate Arizona's proof of citizenship procedure by amending the state specific portion of the federal voter registration form. The vote failed along party lines, 2 - 2. HAVA requires any measure to be carried by at least three votes. Therefore, the measure failed.

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026903

Jeannie Layson/EAC/GOV  
04/06/2007 05:27 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc EAC Staff

bcc

Subject FYI ONLY: Today's media inquiries (04-06-07)

1. I confirmed for Matt Murray of Roll Call that Comm. Hunter is a Republican and that she came to EAC in March. He asked for our FY budget figures, which I sent to him. He asked if it was true that we bungled the certification of voting systems in reference to the CIBER situation. I said that it had nothing to do with certifying voting systems, and explained the entire interim process and the reason we had to implement after NIST told us they wouldn't get labs accredited until late 2006 and NASED's termination of its program. I said we announced this program and our decision to invite the three labs to apply at a public meeting in 2005, and that we've had several public meetings about the interim program, as well as sending updates to our stakeholders. He asked me how I would characterize the criticism surrounding CIBER, and I said the feedback we received was that we should have been more proactive in reminding people that CIBER had not received interim certification, that it was still pending. I emphasized that we have not certified any voting systems, so it would be incorrect to state that we had "bungled" that process. He asked if we released the Eagleton data after Hinchey urged us to, and I said yes, but told him that the chair announced that we would complete this project w/n 30 days at a public meeting in Feb. in which Eagleton testified and answered questions about their methodology. I also gave him the following quote: We have a responsibility to take the time to get things right. However, we understand the criticism and we are taking a hard look at our internal processes. We will identify what changes need to be made, and we will make them. We take comments from Congress very seriously, and we appreciate their input and their willingness to give us what we need to get the job done.

2. The chair was interviewed by Pam Zubeck of the Gazette (CO) about what she's seeing regarding voting by mail. The chair talked about the trends in the NW, and how it was important to make sure states have accurate and up to date lists. She noted that the introduction of statewide databases will be especially helpful to those states. The reporter asked if CO sends out ballots to inactive voters, and the chair said yes, and told her it is a federal requirement that voters must be notified before they are removed from voter rolls.

3. Freelance journalist Meg Cox, who is writing an article for Op-Ed News, had the following questions, and my responses follow: a) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

b) I understood you to say that the December EAC report includes all of the Wang/Serebrov recommendations but not all of the Wang/Serebrov findings. Is that correct? The report does include all of their recommendations, as well as the research they reviewed, which includes books and articles and court cases. The contract with the consultants did not ask them to produce findings. It was an initial effort to identify what relevant information is available, define voter fraud and voter intimidation, and make recommendations to EAC regarding future study.

c) I understood you to say that EAC staff added results of their own research to the December EAC report. Is that correct? Yes, EAC conducted additional research to further clarify the definitions of "voter fraud" and "voter intimidation." On page 13, you will see the results of the EAC research, which resulted in defining the scope of future study and new terminology for these topics -- election crimes. EAC staff reviewed the report for accuracy, for grammar and added language that reflected the commission's decision to adopt the final version based upon the initial research provided by the consultants. New language was also added to communicate the commission's decision adopt six of the 16 recommendations put forth by the consultants.

d) If I'm correct on questions 2 and 3, would it be accurate to say that readers of the December report

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cannot tell how much of that report does and does not reflect the original Wang/Serebrov findings? Again, the contract with the consultants did not ask them to produce findings, nor was that the scope of the contract. It was an initial effort that tasked them to identify what relevant information is available, define voter fraud and voter intimidation, and make recommendations to EAC regarding future study. The research (Appendix D, 197 pages; and Appendix B, 57 pages) and all of their recommendations are included in the final report.

e) I called earlier today requesting the Wang/Serebrov report, and you sent me the December EAC report. I am concerned that if I had not already been researching this closely, I would have thought that you'd sent me the Wang/Serebrov report and would have reported incorrectly that you had. Does the EAC have any comment on this manner of repoding to press inquiries? (I contacted you to request the report after I read in the Statesman Journal of Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission didn't widely release the consultants' review, but makes it available on request." Did the EAC indeed give Ms. Cocco a copy of the "consultants' review"? Or has she misunderstood you in the way I'm concerned about?) I sent you a link to the "EAC report" because it is what was adopted by the commission based upon the research conducted by the consultants. The final report clearly states how it was compiled, includes bios for both of the consultants, their research and summaries of their interviews. Regarding Ms. Cocco, I explained the entire process to her. I provided the staff update on the project which was presented at a public meeting in May 2006 and the final report, which is posted on the EAC website. Regarding "this manner of responding to press inquiries," I have forwarded your comments to my supervisor so he can review my performance regarding the handling of your inquiry.

f) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? 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 research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project, but in every case, the agency has a responsibility to make sure the information it receives from any contractor is accurate. In this case, EAC staff read every article cited by the consultants and reviewed the contents of every interview they conducted. Appendix C contains the interview summaries, and the changes EAC made are clearly footnoted. Regarding other research projects, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. If the research focuses on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

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Jeannie Layson/EAC/GOV  
04/10/2007 01:11 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc Tom Wilkey, jthompson@eac.gov, psims@eac.gov,  
stephanie.wolson@gmail.com, sbanks@eac.gov, Elieen L.  
Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC  
bcc

Subject NYT Interview Request

History:

✉ This message has been replied to.

Commissioners,  
Ian Urbina of the NYT is working on a story about our fraud report. He has the original, and he's asking questions about how we arrived at the final version, as well as wanted to confirm that there were intense discussion among the commissioners about whether to release everything.

Madam Chair--I need to know if you can speak with him in the next 30 min. If not, I need to know which commish would be available to speak with Ian. We are under seige, and I think it's very important to have a commish perspective/input in this piece.

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026906



Bryan Whitener/EAC/GOV  
04/04/2007 05:31 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-4-07, Wed )

Commissioners:

For the second time in a month, Dan Seligson of Electionline.org requested the same document on voter fraud that was requested of EAC by the House Appropriations Subcommittee on Financial Services. Again, we said that the document that was requested by the subcommittee is considered predecisional under the Freedom of Information Act (FOIA), but that of course we provided it to the subcommittee because they are exempt from FOIA. We noted however, that the EAC adopted a final report on election crimes at our Dec. 7, 2006 public meeting. We said that the final report was based on the research provided by the consultants and additional information gathered by EAC staff and that it is available on our website [here](#). We said that the report includes all of the data reviewed by the consultants. (links on page 24.) and that it also includes all of the recommendations for further study that the consultants put forth. We said that ultimately, the commission adopted four of those recommendations and provided the press release link [here](#). We said that 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.

###

026907

Jeannie Layson/EAC/GOV  
12/12/2006 04:57 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Need info from you for annual report

History: This message has been replied to.

Elle,

I need a more complete TGDC roster, including their titles and affiliations. Please see last year's annual report, page 45. Again, I need a complete list of those who served in Fiscal Year 2006, which covers Oct. 1, 2005 through Sept. 30, 2006. Anyone who was not serving as of Sept. 30, I will list them as former members. Please let me know if you have any questions.

Jeannie Layson  
U.S. Election Assistance Commission  
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Elieen L. Collver/EAC/GOV



Elieen L. Collver/EAC/GOV  
12/12/2006 04:45 PM

To jlayson@eac.gov@EAC  
cc bwhitener@eac.gov  
Subject Re: Need info from you for annual report

Here is a list of the cities Commissioner Davidson has visited on official business for FY06:

San Francisco, CA  
Portland, OR  
Albuquerque, NM  
Hot Springs, VA  
Bismark, ND  
Cleveland, OH  
Seattle, WA  
Austin, TX  
Denver, CO  
Gaithersberg, MD  
Caper, WY  
Columbia, SC  
Santa Fe, NM  
San Diego, CA  
Eugene, OR  
Chicago, IL  
Hartford, CT  
Providence, RI  
Carson, CA  
St. Louis, MO

Roster of TGDC members who served during FY06:

026908

Dr. William Jeffrey  
John Gale  
Alice Miller  
Sharon Turner-Buie  
Helen Purcell  
Jim Elekes (*resigned July, 26, 2006*)  
J.R. Harding (*resigned July 26, 2006*)  
H. Stephen Berger  
Dr. Brittain Williams  
Paul Craft (*replaced August 2, 2006*)  
Patrick Gannon  
Whitney Quesenbery  
Dr. Ronald Rivest  
Dr. Daniel Schutzer

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Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
12/12/2006 09:03 AM

To: Elieen L. Collver/EAC/GOV@EAC  
cc: bwhitener@eac.gov  
Subject: Need info from you for annual report

Elle,

Per Bryan's earlier emails, I need several things from you ASAP for the Annual Report, which covers everything from Oct. 1, 2005 to Sept. 30, 2006. 1) A list of cities the commissioner visited during that time period; 2) The TGDC roster as of Oct. 1, 2005. I also need a list of members who resigned during that time period so I can note their service, even though they won't be listed on the roster. In addition, please make sure her bio on the website is current, as that is what will be in the annual report.

Also, my records indicate that I did not receive a response from you regarding my FOIA request. Please note that it specifically asks for a response from everyone, even if the response is "no records." I'm assuming you have checked with the commissioner to see if she has any responsive records. Original request is below. Please let me know if you have any questions or need clarification about any of this. Thank you.

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.

026909

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)

Juliet E. Hodgkins/EAC/GOV  
11/28/2006 01:35 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Paul DeGregorio/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC  
bcc Elieen L. Collver/EAC/GOV  
Subject Call in number for tomorrow's briefing on the Voting Fraud  
and Voter Intimidation Report

I have made arrangements for a conference call for tomorrow's briefing. There are four lines available. That would be sufficient for Tom, Donetta, and me (if necessary). In addition, there is one additional line in the event someone else needs to call in. If there will be more than the callers identified above (Tom, Donetta, and me) please let me know.

Here is the call in number and pass code:

Local: (202) 708-9998  
Toll-Free: (866) 222-9044.

Pass code if you need it is 63114.

The call will be open from 10:30 to 12:00 (just in case we run over the one hour scheduled meeting).

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

026911

Jeannie Layson/EAC/GOV  
12/12/2006 09:03 AM

To Elieen L. Colver/EAC/GOV@EAC  
cc bwhitener@eac.gov  
bcc

Subject Need info from you for annual report

History:  This message has been replied to and forwarded.

Elle,

Per Bryan's earlier emails, I need several things from you ASAP for the Annual Report, which covers everything from Oct. 1, 2005 to Sept. 30, 2006. 1) A list of cities the commissioner visited during that time period; 2) The TGDC roster as of Oct. 1, 2005. I also need a list of members who resigned during that time period so I can note their service, even though they won't be listed on the roster. In addition, please make sure her bio on the website is current, as that is what will be in the annual report.

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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

026912

Jeannie Layson/EAC/GOV  
12/12/2006 09:26 AM

To Elieen L. Collver/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History

This message has been forwarded

That also applies to the Eagleton contract, which is voter ID. Also, please check with the commissioner to make sure she doesn't have any responsive records.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Elieen L. Collver/EAC/GOV



Elieen L. Collver/EAC/GOV  
12/12/2006 09:23 AM

To jlayson@eac.gov@EAC  
cc  
Subject Re: FOIA Request

Jeannie,

I don't have any written correspondence regarding the Voter Fraud issue/Tova or Job correspondence.

I did have a few phone calls that came in from one of the members of the working group. But that's it as far as correspondence.

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  
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
11/28/2006 10:27 AM

To EAC Personnel  
cc  
Subject FOIA Request

026913

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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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  
11/16/2006 11:34 AM

To Eileen L. Collver/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Matthew  
Masterson/EAC/GOV@EAC

cc

bcc

Subject Meeting with Commissioners re: Draft Voter Fraud and Voter  
Intimidation Report

History

This message has been replied to and forwarded

I need to set a meeting with the Commissioners some time during the week of Nov 27 to discuss their comments/issues on the draft voter fraud/voter intimidation report. Please let me know when they are available either in person or by phone. My only limitations at this point are Wednesday, 12:00 -2:00 and Friday, 9:00 - 10:00.

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

026915

Jeannie Layson/EAC/GOV  
11/28/2006 10:27 AM

To EAC Personnel  
cc  
bcc  
Subject FOIA Request

History:  This message has been replied to.

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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Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

Jeannie Layson/EAC/GOV  
04/10/2007 01:52 PM

To Donetta L. Davidson/EAC/GOV  
cc  
bcc  
Subject interview

We asked them to do two things: 1) define voter fraud and voter intimidation; and 2) provide recommendations for future study.

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)

026916

Jeannie Layson/EAC/GOV

04/11/2007 10:58 AM

To EAC Personnel

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 Commission**

**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

026917

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 was 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.*

###

Bryan Whitener/EAC/GOV  
04/11/2007 05:49 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-11-07, Wed )

Commissioners:

Today we had the following media inquiries:

(1) Commissioner Hillman was interviewed by Allison Keyes of NPR about the fraud report. Commissioner Hillman explained the scope of the contract and that we asked the contractors to do two things: define voter fraud and intimidation and provide recommendations for future study on these topics. The commissioner pointed out that we did not ask them for conclusions. The reporter asked if it was true that EAC was trying to suppress information about voter intimidation among minorities. The commissioner said she had worked all her life to prevent minorities from being intimidated at the polls, and that she was very anxious to embark upon a more expansive study on this very topic. The commissioner said the agency was transparent, and talked about our public meetings and the transcripts and testimony that were available to the public through our website.

**NOTE:** The interview will be aired repeatedly this evening on the five minute newscast at the top and bottom of the hour. To listen, tune into WAMU 88.5 FM American University Radio or Listen Live.

(2) Laura Strickler of CBS News wanted to know how much we spent on the fraud report and the voter ID report. We told her the fraud and intimidation research contract was for \$147,106, and the voter ID and provisional voting research contract was \$560,002. We explained that 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.

(3) Rich Wolfe of USA Today is working on a story on what states will have to do if Rush Holt's bill is enacted. He asked for details on what states and vendors are currently facing in order to transition from the 2002 to the 2005 voting system guidelines which we provided. Brian Hancock also spoke with him on background about the testing and certification program. Mr. Wolf wanted to know more details regarding the differences in the VSS 2002 and the VVSG 2005. Brian explained that the most significant changes related to accessibility and usability. His real concern was what practical effect the VVSG would have on elections 2008. We noted that more than the VVSG, the changes brought about by the EAC implementation of our Testing and Certification Program might have just as big an impact. We noted that we would not be grandfathering any NASED systems, and that if State law required EAC certification, the manufacturers would need to bring their voting systems through the EAC program for full testing. We also explained the implementation date of December 2005 and that as of that date, no systems could apply for testing to the 2002 VSS. We also made sure that Mr. Wolf understood that the EAC program was voluntary and that participation in the EAC certification program would be driven ultimately by the statutes, regulations or procedures in each of the States.

(4) Paul DeGregorio called to let us know he was interviewed by Adam Stichko of the St. Louis Post Dispatch about the fraud report. The reporter wanted to know if the reaction was a major setback for the agency. Paul said no, and that as EAC noted in its statement, it was going to improve its internal operations. He pointed out that sometimes EAC makes tough decisions that both sides of the aisle might not agree upon. But regardless, he said the agency has a responsibility to conduct due diligence, and make the tough decisions. He talked about what we have accomplished and the assistance we provide -- best practices, quick starts, VVSG and certification program.

(5) Meg Cox a freelance writer in Chicago asked what prompted EAC's Statement Regarding Research &

026926

Contracting Policies and whether something new happened in Congress to prompt the statement. We said that the statement contains the information.

(6) Ross Tuttle of Los Angeles was in town today and is working on a documentary series titled "The Freedom Files" which includes an episode on voting rights. He asked for EAC's statement in response to the NYT article on the release of the report. We sent him today's statement.

(7) Kat Zambon of electionline.org asked if other states have a similar partnership arrangement that the Secretary of State in Georgia has with Kennesaw State University to provide technical support for the state's voting machines, as well as outreach, education, ballot design, training and consultation. We said this is the only one that we are aware of.

(8) John Gideon of Voters Unite and Brad Blog had the following questions, and Jeannie's responses follow:

A. How does the EAC see their position as a "clearinghouse" of information as required by HAVA? We follow the mandates of HAVA regarding our responsibilities to conduct studies about election administration issues. The results of those studies make up the "clearinghouse." B. What responsibility does the EAC have with regard to warning states about what may be security vulnerabilities in specific voting systems? The EAC certification program will collect anomaly reports (go here to view the form), which we will then investigate and share with election officials and the public. C. Chairwoman Davidson has said that the EAC's middle name is "Assistance". How does ignoring potential security issues fit into that theme? As I mentioned above, monitoring anomalies is part of our certification program. As we've discussed before, the system you are referring to was not certified by EAC. If the manufacturer of this system wants an EAC certification for this system, it would have to successfully complete our certification process and adhere to all of its rules. EAC did not grandfather any systems already in use (meaning that we did not automatically issue certifications or transfer NASED qualifications to existing systems), including the one you referenced. Mr. Gideon replied that he was amazed that instead of answering the questions I conflated the certification of voting systems with a security vulnerability that is in existence across the country. He asserted this issue had nothing to do with the EAC certification program. I replied that the very fact that we have set up a system to track voting system anomalies is evidence that we think monitoring performance is very important. Again, as we have discussed many times, we did not certify this voting system. If it successfully completes EAC's certification program in the future, then it would be subject to our rules and conditions, and if a problem occurs we would notify the election community and the public.

###



Rosemary E.  
Rodriguez/EAC/GOV  
04/12/2007 08:28 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, "Stephanie Wolson"  
[REDACTED], "Fabre, Stacie"  
bcc [REDACTED]

Subject Re: Draft letter to board of advisors and standards board

Pls see the front page of today's NYTimes--scant evidence of voter fraud

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/12/2007 07:31 AM EDT  
**To:** Caroline Hunter; Gracia Hillman; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Stephanie Wolson"  
<[REDACTED]>; "Fabre, Stacie" <[REDACTED]>; Thomas  
Wilkey; Gavin Gilmour; Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

From the variety of comments it is not clear to me that there is a common understanding on how to proceed and what we should say -- or at least I am not comfortable that I understand how you all want this letter to read. So, I would suggest we spend a bit more time on the theme this morning so that I can efficiently and accurately edit the letter so that we can get it out timely today.

-----  
Sent from my BlackBerry Wireless Handheld

Caroline C. Hunter

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

**From:** Caroline C. Hunter  
**Sent:** 04/12/2007 07:27 AM EDT  
**To:** Gracia Hillman; Juliet Hodgkins; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson" <[REDACTED]>;  
"Fabre, Stacie" <[REDACTED]>; Thomas Wilkey; Gavin Gilmour;  
Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

Keeping it narrow to the current controversy is ok with me, but I think we cannot assume people know how the recent events unfolded, ie Cong released, NYT wrote, etc.

Gracia Hillman

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

**From:** Gracia Hillman  
**Sent:** 04/12/2007 07:22 AM EDT  
**To:** Caroline Hunter; Juliet Hodgkins; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson" <[REDACTED]>;  
"Fabre, Stacie" <[REDACTED]>; Thomas Wilkey; Gavin Gilmour;  
Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

It appears there will be a substantive rewrite so I will save my edits for that version.

However, my original suggestion was to communicate with the boards about the current controversy, not just research in general. Otherwise it looks like we are sidestepping the problem at hand, which is why we are writing to the boards in the first place.

026922

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.

cc

bcc

Subject FOIA Request

History:  This message has been replied to.

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  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

026923

Jeannie Layson/EAC/GOV  
04/06/2007 05:27 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc EAC Staff

bcc

Subject FYI ONLY: Today's media inquiries (04-06-07)

1. I confirmed for Matt Murray of Roll Call that Comm. Hunter is a Republican and that she came to EAC in March. He asked for our FY budget figures, which I sent to him. He asked if it was true that we bungled the certification of voting systems in reference to the CIBER situation. I said that it had nothing to do with certifying voting systems, and explained the entire interim process and the reason we had to implement after NIST told us they wouldn't get labs accredited until late 2006 and NASED's termination of its program. I said we announced this program and our decision to invite the three labs to apply at a public meeting in 2005, and that we've had several public meetings about the interim program, as well as sending updates to our stakeholders. He asked me how I would characterize the criticism surrounding CIBER, and I said the feedback we received was that we should have been more proactive in reminding people that CIBER had not received interim certification, that it was still pending. I emphasized that we have not certified any voting systems, so it would be incorrect to state that we had "bungled" that process. He asked if we released the Eagleton data after Hinchey urged us to, and I said yes, but told him that the chair announced that we would complete this project w/n 30 days at a public meeting in Feb. in which Eagleton testified and answered questions about their methodology. I also gave him the following quote: We have a responsibility to take the time to get things right. However, we understand the criticism and we are taking a hard look at our internal processes. We will identify what changes need to be made, and we will make them. We take comments from Congress very seriously, and we appreciate their input and their willingness to give us what we need to get the job done.

2. The chair was interviewed by Pam Zubeck of the Gazette (CO) about what she's seeing regarding voting by mail. The chair talked about the trends in the NW, and how it was important to make sure states have accurate and up to date lists. She noted that the introduction of statewide databases will be especially helpful to those states. The reporter asked if CO sends out ballots to inactive voters, and the chair said yes, and told her it is a federal requirement that voters must be notified before they are removed from voter rolls.

3. Freelance journalist Meg Cox, who is writing an article for Op-Ed News, had the following questions, and my responses follow: a) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

b) I understood you to say that the December EAC report includes all of the Wang/Serebrov recommendations but not all of the Wang/Serebrov findings. Is that correct? The report does include all of their recommendations, as well as the research they reviewed, which includes books and articles and court cases. The contract with the consultants did not ask them to produce findings. It was an initial effort to identify what relevant information is available, define voter fraud and voter intimidation, and make recommendations to EAC regarding future study.

c) I understood you to say that EAC staff added results of their own research to the December EAC report. Is that correct? Yes, EAC conducted additional research to further clarify the definitions of "voter fraud" and "voter intimidation." On page 13, you will see the results of the EAC research, which resulted in defining the scope of future study and new terminology for these topics -- election crimes. EAC staff reviewed the report for accuracy, for grammar and added language that reflected the commission's decision to adopt the final version based upon the initial research provided by the consultants. New language was also added to communicate the commission's decision adopt six of the 16 recommendations put forth by the consultants.

d) If I'm correct on questions 2 and 3, would it be accurate to say that readers of the December report

026924

cannot tell how much of that report does and does not reflect the original Wang/Serebrov findings? Again, the contract with the consultants did not ask them to produce findings, nor was that the scope of the contract. It was an initial effort that tasked them to identify what relevant information is available, define voter fraud and voter intimidation, and make recommendations to EAC regarding future study. The research (Appendix D, 197 pages; and Appendix B, 57 pages) and all of their recommendations are included in the final report.

e) I called earlier today requesting the Wang/Serebrov report, and you sent me the December EAC report. I am concerned that if I had not already been researching this closely, I would have thought that you'd sent me the Wang/Serebrov report and would have reported incorrectly that you had. Does the EAC have any comment on this manner of replying to press inquiries? (I contacted you to request the report after I read in the Statesman Journal of Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission didn't widely release the consultants' review, but makes it available on request." Did the EAC indeed give Ms. Cocco a copy of the "consultants' review"? Or has she misunderstood you in the way I'm concerned about?) I sent you a link to the "EAC report" because it is what was adopted by the commission based upon the research conducted by the consultants. The final report clearly states how it was compiled, includes bios for both of the consultants, their research and summaries of their interviews. Regarding Ms. Cocco, I explained the entire process to her. I provided the staff update on the project which was presented at a public meeting in May 2006 and the final report, which is posted on the EAC website. Regarding "this manner of responding to press inquiries," I have forwarded your comments to my supervisor so he can review my performance regarding the handling of your inquiry.

f) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? 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 research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project, but in every case, the agency has a responsibility to make sure the information it receives from any contractor is accurate. In this case, EAC staff read every article cited by the consultants and reviewed the contents of every interview they conducted. Appendix C contains the interview summaries, and the changes EAC made are clearly footnoted. Regarding other research projects, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. If the research focuses on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

026925

Jeannie Layson/EAC/GOV  
04/05/2007 04:53 PM

To Donetta L. Davidson/EAC/GOV, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc EAC Staff

bcc


Subject FYI ONLY: Today's media inquiries (04-05-07)

1. Matthew Murray of Roll Call interviewed Commissioner Hunter about the voter ID report. He asked her why the commission declined to adopt it, and she explained that we thought it was important to look at more than one year and that the commission had questions about the methodology -- two analyses produced two conclusions and the state comparisons (reading from the commission statement). She said it was the EAC's responsibility to conduct due diligence and make sure the data was accurate. He asked why it took so long to reach a decision, and that some groups were saying we purposely did not act before the Nov. elections. The commissioner explained that we were reviewing the data and during that time several independent experts also reviewed the information. He wanted to know if Eagleton discussed their methodology with us, and the commissioner said yes. He asked how much it cost, the commissioner told him \$560,000, and explained that the contract also included research on provisional voting which resulted in a set of best practices. He asked how EAC will prevent this kind of thing from happening in the future, and the commissioner said we are going to take a much more thorough approach, including making sure the methodology is approved by everyone before the process begins and that we will be constantly updated as the research progresses. He asked if the research didn't produce what we thought it would, and she said the issue was that we had concerns about the methodology. She pointed out that the commission voted to make it public so people could examine it and come to their own conclusions. He asked if we had refused to release this in the past, and I explained that while we were reviewing the information it was a pre-decisional document, but that along with the commission's decision not to adopt the report, they took action to make it public. I pointed out to him that this was an unanimous decision reached by two dems and two reps, and that they also unanimously decided to make it public. I told him we had public meetings about this project, in which the consultants were asked questions about the methodology.

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026926

Rosemary E.  
Rodriguez/EAC/GOV  
04/04/2007 05:25 PM

To Jeannie Layson/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
bcc  
Subject Re: Roll Call Interview Request for Tomorrow 

Yes please and thanks!

Jeannie Layson

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

**From:** Jeannie Layson  
**Sent:** 04/04/2007 05:00 PM EDT  
**To:** Donetta Davidson; Caroline Hunter; Rosemary Rodriguez; Gracia Hillman  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins  
**Subject:** Roll Call Interview Request for Tomorrow

Commissioners,

Matt Murray of Roll Call wants to interview one of you tomorrow via phone (he's available all day) about the voter ID report. Commissioner Rodriguez - as the vice chair, you would be up, but since you're out tomorrow, do you want Commissioner Hunter to do the interview? The reporter has the following questions:

1. What fiscal year money did we use to pay for the study? A: Fiscal Year 2005
2. What was the EAC's budget during that fiscal year? A: \$13.8 million

We should assume that his angle is that this was a waste of money -- what does EAC have to show for two years of work and \$560,000 out of a budget of \$13.8 million? He also mentioned that the interest groups are not pleased that we delayed releasing this information, and they are not happy we did not adopt a report. I recommend that we stick with the talking points I circulated last week, which are attached.

The bottom line is that we did receive value from this contract, which included provisional voting research, which culminated in a set of best practices. And yes, the commission decided that the voter ID data provided more questions than answers, and that's why it voted to conduct a much more expansive look at this important topic. However, it also made all of the information available to the public.

Remember, many voter ID laws have changed since 2004, and that also has instructed us how to move forward.

EAC should stand firm on its decision, talk about our next steps to conduct a more extensive study, and stress that we released everything to the public.

Please let me know if you agree with this approach.

[attachment "VoterIDtalkingpts.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100

026927

Jeannie Layson/EAC/GOV  
03/30/2007 08:33 PM

To "Donetta Davidson" <ddavidson@eac.gov>, "Gracia Hillman" <ghillman@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. cc "Tom Wilkey" <twilkey@eac.gov>, "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Julie Thompson" <jthompson@eac.gov>

bcc

Subject Hinchey statement

Hinchey Statement on U.S. Election Assistance Commission's

Release of Report on Voter Identification Issues

Washington, DC - Congressman Maurice Hinchey (D-NY) today released the following report in response to the U.S. Election Assistance Commission's (EAC) release of a report on voter identification issues that was submitted to them by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, and Ohio State University's Moritz College of Law. Hinchey directly requested the release of the report when EAC Chairwoman Donetta Davidson appeared earlier this month before the House Appropriations Subcommittee on Financial Services, of which the congressman is a member. Davidson told Hinchey at the hearing that she would provide the subcommittee with the report that is being released to the public today. Hinchey also requested the release of a separate report on voter fraud and intimidation. The Help America Vote Act (HAVA) requires the EAC to conduct and make available to the public studies regarding certain voting issues.

"I am very pleased that following Chairwoman Davidson's appearances before Congress the EAC decided to do the right thing and make public the Eagleton Institute of Politics study on voter identification issues. I hope that this decision signals a new day of transparency and sets a precedent for all future and previous studies and reports submitted to the EAC.

"When Chairwoman Davidson came before our subcommittee a few weeks ago, I also requested that the EAC make public another report about voter fraud and voter intimidation submitted to them by two outside consultants. It is my hope they will release this report to the public as well. The EAC has the responsibility to keep the public informed on any findings it has with regards to voter fraud, intimidation, and any other electoral issues.

"As we work to increase voter turnout and make our democracy function more effectively, it is imperative that potential voters are assured that they will be able to cast their votes fairly and in an environment free of intimidation. To achieve that goal, the EAC must be open with the information it receives in order to help identify voting problems and make recommendations on fixing them."

-----

Sent from my BlackBerry Wireless Handheld

026928

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,  
klyndyson@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, [REDACTED]  
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

026929



Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)



Elieen L. Kuala/EAC/GOV  
04/12/2007 02:18 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History: This message has been replied to and forwarded.

I did a search through your emails with their names and I didn't find any. I don't have any either. However, I will check and see if we have any mailed correspondence hard copies.

Elle L.K. Kuala  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <stephanie.wolson@gmail.com>

cc  
Subject Re: FOIA Request

Elle, I don't think I have any emails from Job or Tova, but to be on the safe side would you double check

-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 04/12/2007 08:38 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks; Elieen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener; stephanie.wolson@gmail.com  
**Subject:** FOIA Request

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Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

026932



Elieen L. Kuala/EAC/GOV  
04/13/2007 02:00 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History: This message has been replied to.

I checked all of our paper records and found nothing so I submitted our FOIA response to Jeannie.

Elle L.K. Kuala  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/13/2007 12:36 PM

To Elieen L. Kuala/EAC/GOV@EAC  
cc  
Subject Re: FOIA Request

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Elieen L. Kuala  
----- Original Message -----

**From:** Elieen L. Kuala  
**Sent:** 04/12/2007 02:18 PM EDT  
**To:** Donetta Davidson  
**Subject:** Re: FOIA Request

I did a search through your emails with their names and I didn't find any. I don't have any either. However, I will check and see if we have any mailed correspondence hard copies.

Elle L.K. Kuala  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.

025933

Davidson/EAC/GOV  
04/12/2007 01:33 PM

To Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <[REDACTED]>

cc

Subject Re: FOIA Request 

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-----

Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 04/12/2007 08:38 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks; Elieen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener; stephanie.wolson@gmail.com  
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Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

026934



Elieen L. Kuala/EAC/GOV  
04/14/2007 09:58 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FOIA Request

History

This message has been replied to

Also I got your message and I will get to work on that tomorrow. I will email Tom and we can talk about what you want to write to Curtis.

Elle Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
(202) 566-2256  
www.eac.gov

-----  
Sent from my BlackBerry Wireless Handheld  
Donetta L. Davidson  
----- Original Message -----

**From:** Donetta L. Davidson  
**Sent:** 04/14/2007 12:35 PM EDT  
**To:** Elieen Kuala  
**Subject:** Re: FOIA Request

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Elieen L. Kuala  
----- Original Message -----

**From:** Elieen L. Kuala  
**Sent:** 04/13/2007 02:00 PM EDT  
**To:** Donetta Davidson  
**Subject:** Re: FOIA Request

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Elle L.K. Kuala  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/13/2007 12:36 PM

To Elieen L. Kuala/EAC/GOV@EAC  
cc

026935

Subject Re: FOIA Request

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Elieen L. Kuala  
----- Original Message -----

**From:** Elieen L. Kuala  
**Sent:** 04/12/2007 02:18 PM EDT  
**To:** Donetta Davidson  
**Subject:** Re: FOIA Request

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blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/12/2007 01:33 PM

To: Jeannie Layson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, "stephanie wolson" <[REDACTED]>

cc

Subject Re: FOIA Request

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-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 04/12/2007 08:38 AM EDT

026936

**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey; Juliet Hodgkins; Karen Lynn-Dyson; Margaret Sims; Sheila Banks; Elieen Kuala; Bert Benavides; Gavin Gilmour; Bryan Whitener; stephanie.wolson@gmail.com

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Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

026937



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

026938



**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.

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.  
bcc  
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.

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Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV  
04/16/2007 11:28 AM

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Wilkey/EAC/GOV@EAC  
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Rodriguez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC

026942

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

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026943



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.”

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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.  
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026945



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Subject IG Press Release

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EAC IGRequest 04-16-07.doc

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026946



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

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April 16, 2007

Contact: Jeannie Layson  
Bryan Whitener  
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###

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.  
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bcc

Subject Re: IG Press Release 

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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 IGRequest 04-16-07FINAL.doc Jeannie Layson

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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

026948


cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.  
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Hodgkins/EAC/GOV@EAC

026949

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EAC IGRequest 04-16-07.doc

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026950



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

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Bryan Whitener  
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###

026951

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.  
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Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

Jeannie Layson/EAC/GOV

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026952

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04/16/2007 11:38 AM


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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

026954



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

Deliberative Process  
Privilege

## 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 Yeva 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.*

###

026956

Jeannie Layson/EAC/GOV  
04/16/2007 03:18 PM

To EAC Personnel, fms.eacfabre@yahoo.com  
cc  
bcc  
Subject Chair requests internal review

Hello everyone,

I wanted to notify you that Chair Davidson, in agreement with the other three commissioners, has requested that our IG -- Curtis Crider -- conduct a review of our contracting procedures surrounding the voter identification and vote fraud and voter intimidation research projects. Very shortly, I will distribute her request along with a press release to the media and to all our stakeholders. However, she wanted to make sure the staff was fully informed about this action before we make this news public.

The chair's request, the press release and all of the materials referenced in her request will be available on the home page under Announcements very shortly. Please direct anyone with questions about this action to the website. And let me know if you have questions about any of this information or if I can be of assistance answering questions from the public about this issue.

The chair wants to convey to everyone how much she appreciates your hard work, and that she is confident in our ability to work with Curtis to resolve this issue. Tom would like staff to join him at 3:30 today in the large conf. room upstairs to answer any questions you have.



2007-13 [ 4-16-07 ] EAC Requests Review of Voter ID, Fraud & Intimidation Research Projects.pdf

Jeannie Layson  
U.S. Election Assistance Commission  
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026957



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Washington, DC 20005

**Deliberative Process  
Privilege**

## **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.

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###

026958



**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.

**United States Senate**  
WASHINGTON, DC 20510

April 12, 2007

The Honorable Donetta Davidson  
Chairman  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, DC 20005

Dear Commissioner Davidson:

We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.

While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.

On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.

On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a \$560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.

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Commissioner Davidson

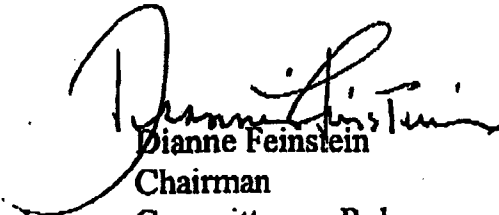
- 2 -

April 12, 2007


It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,



Dianne Feinstein  
Chairman  
Committee on Rules  
and Administration



Richard J. Durbin  
Chairman  
Subcommittee on Financial  
Services and General  
Government  
Committee on Appropriations

We request information and documentation from the Commission that answer the following questions:

**COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

#### **COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.

4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

**COMMITTEE ON THE JUDICIARY**  
 • CHAIR — SUBCOMMITTEE ON IMMIGRATION,  
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 • SUBCOMMITTEE ON COURTS, THE INTERNET, AND  
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 • SUBCOMMITTEE ON COMMERCIAL AND  
 ADMINISTRATIVE LAW

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**COMMITTEE ON HOUSE ADMINISTRATION**  
 • CHAIR — SUBCOMMITTEE ON ELECTIONS

CHAIR, CALIFORNIA DEMOCRATIC CONGRESSIONAL  
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**Congress of the United States**  
**House of Representatives**  
 Washington, DC 20515-0516

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 REFUGEE CAUCUS

CO-CHAIR, CONGRESSIONAL VIETNAM CAUCUS

April 12, 2007

Chairwoman Donetta Davidson  
 United States Election Assistance Commission  
 1225 New York Avenue N.W., Suite 1100  
 Washington, DC 20005

Dear Chairwoman Davidson:

As Chairwoman of the Committee on House Administration Subcommittee on Elections, which has oversight over the Election Assistance Commission, I was alarmed at what appears to be an emerging pattern by the EAC to hold off on publicly releasing reports as well as modifying reports that are released. Two recent instances have brought to light the increased politicalization of the EAC and this lack of transparency.

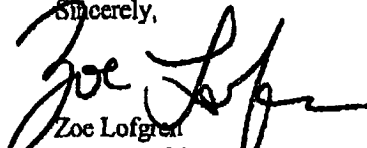
First, the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released. The EAC released report "Election Crimes: An Initial Review and Recommendations for Future Study" does not accurately reflect the research in the original report "Voting Fraud and Voter Intimidation."

Second, in addition to this report on voter fraud and intimidation, the EAC recently released a report by The Eagleton Institute of Politics at Rutgers University on voter identification. Again, the EAC did not endorse the report, citing methodological concerns, and only released it after pressure from Congress.

The EAC is charged with conducting nonpartisan research and to advise policy makers. How are we to rely on advice if instead of full and accurate reporting, we are provided an inaccurate modified version which negates clear evidence to the contrary in the original research? I am outraged that the election process is being threatened by a lack of transparency and limited discussion.

In order to preempt any further problems with the release of reports from the EAC, I request all versions of the Absentee Ballot report and the Military and Overseas report, as well as any other overdue reports, including supporting documents and research, be provided to my office by close of business Monday, April 16, 2007. These reports are overdue and I want to ensure that the delay is no way related to what appears to be an ongoing problem of politicalization of the EAC.

Sincerely,

  
 Zoe Lofgren  
 Member of Congress

For Immediate Release

April 11, 2007

## **Hinchey, Serrano Urge Non-Partisanship, Greater Transparency at Election Assistance Commission**

**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 a 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 is 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 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.

026968



Congressman José E. Serrano  
Representing the Sixteenth District of New York

## PRESS RELEASE

MEDIA CONTACT:  
**Philip Schmidt** (202)  
225-4361

FOR IMMEDIATE  
RELEASE:  
Apr 11, 2007

# SERRANO, HINCHEY URGE NON-PARTISANSHIP, GREATER TRANSPARENCY AT ELECTION ASSISTANCE COMMISSION

Washington, DC – April 11, 2007 – 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.

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026969

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###

<b>WASHINGTON OFFICE</b> 2227 Rayburn House Office Building Washington, D.C. 20515-3216 (202) 225-4361 Fax: (202) 225-6001	<b>BRONX OFFICE</b> 788 Southern Blvd. Bronx, New York 10455 (718) 620-0084 Fax: (718) 620-0658
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026970





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.

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###

026971

Jeannie Layson/EAC/GOV  
04/17/2007 04:56 PM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc EAC Staff

bcc

Subject Today's press inquiries (04-17-07)

1. I spoke with St. Louis editorial board members Christine Bertelson and Kevin Korrigan regarding an editorial that ran today, asserting that we'd worked on the vote fraud/voter intimidation study for five years, and that the administration/White House edited the report. I told them both of these assertions were false, and I requested a correction. I gave them the details about how this project was conceived and managed. I explained that 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. I said the assertion that the administration edited the document was false, and said that at no point in the process did the administration play any role. I also pointed out that the chair requested the IG to fully review the matter. They are going to run a correction. The editorial follows.

### **Snipe hunting in Jeff City**

*Tuesday, Apr. 17 2007*

The Missouri Legislature's dogged efforts to crack down on voter fraud call to mind the hallowed tradition of the snipe hunt.

In a snipe hunt, gullible kids are taken out to the woods, handed sticks and gunny sacks and told to track down the elusive snipe. Meanwhile, their pals, who know a snipe is a bird of marsh and shore generally found nowhere near the woods, yuck it up.

Voter fraud is about as rare as snipe in most parts of the country, including Missouri. As evidence of that we have the testimony of (a) a five-year study by the federal Election Assistance Commission; (b) a report from the Missouri Secretary of State showing nobody in the state tried to vote with a fake I.D. in 2006; (c) Department of Justice statistics showing only 86 people were convicted of voter fraud-related crimes in the last five years, many of them on trivial errors; and (d) a federal judge's ruling last week that the justice department had failed to demonstrate that voter fraud had occurred in Missouri last year.

Undaunted by these facts, Republicans in the Legislature lurk about like Elmer Fudd with their gunny sacks and sticks, promoting bills to require voters to present photo identification before they're allowed to cast a ballot. They passed such a bill last year, but the courts threw it out as unfair to those who couldn't afford the cost and hassle involved in getting a photo I.D. card.

029972

This year's versions of the photo I.D. bills would allow voters without photo I.D. to cast "provisional ballots," which may or may not get counted. So, despite the fact that a photo I.D. requirement would disenfranchise many voters in the cause of solving a problem that doesn't exist, the Missouri House could pass such a bill this week.

Evidence continues to mount that the hunt master for the national voter I.D. snipe hunt is none other than Karl Rove, President George W. Bush's deputy chief of staff and political guru. As The New York Times suggested Sunday, "The more we learn about the White House purge of United States attorneys, the more a single thread runs through it: the Bush administration's campaign to transform the minor problem of voter fraud into a supposed national scourge."

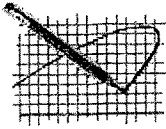
Not only did the administration suggest that some of the eight fired prosecutors had been insufficiently aggressive in pursuing voter fraud cases, it changed the wording of the Election Assistance Commission's findings on the voter fraud issue. What originally read, "there is widespread but not unanimous agreement that there is little polling place fraud" became "there is a great deal of debate on the pervasiveness of fraud."

Moreover, the release of the commission's report was delayed for nine months, during which period eight states, including Missouri, dealt with voter I.D. laws. Since the 3 percent to 4 percent of the electorate who don't have photo I.D.s tend to be poor, disabled or elderly voters, suppressing their vote would tend to help Republican candidates.

Investigators looking for evidence of fraud need look no further than the e-mail messages emanating from Mr. Rove's offices. Alas, thousands, perhaps millions, of those messages are now "missing." Perhaps Attorney General Alberto Gonzales will shed some light on the problem when his testimony before the Senate Judiciary Committee is rescheduled. In the meantime, Missouri lawmakers should put down the sticks and gunny sacks and back slowly out of the woods before their constituents realize they've been snookered, too.

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)

026973



Curtis Crider/EAC/GOV

04/20/2007 11:46 AM

To Donetta L. Davidson/EAC/GOV@EAC, jhodgkins@eac.gov,  
Margaret Sims/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,

cc

bcc

Subject evaluation of contracting

To complete our evaluation of the contracting process and related issues for the voter fraud research and voter intimidation and voter identification research projects, we will need copies of all e-mails and a number of documents related to the projects including copies of all of the various drafts (versions) of the reports. I am requesting that all EAC personnel be notified that they are to preserve all of the documents including e-mails related to the projects. We are in the process of setting up an e-mail account to receive the documents, It is imperative that all documents related to the projects be preserved. As soon as the account is set up we will notify you of the address.

In addition, we are requesting access to the backup e-mail files maintained by GSA and EAC. As a result, we are requesting that no backup tapes or files be destroyed.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

blackberry 202 725 0969

**Important:** This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

026974

Curtis Crider/EAC/GOV  
04/23/2007 02:27 PM

To EAC Personnel  
cc  
bcc  
Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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026975



Curtis Crider/EAC/GOV

04/23/2007 02:33 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

A question has been raised on the e-mails.

Q. Are these emails among staff, to recipients outside the office, or both?

A. We would like ALL e-mails including those among staff and recipients outside of the office.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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---

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eaconn@eac.gov](mailto:eaconn@eac.gov). If you have any hard copy documents, please let me know.

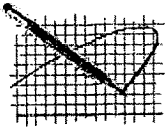
If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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026976



Curtis Crider/EAC/GOV  
04/23/2007 03:24 PM

To EAC Personnel  
cc  
bcc  
Subject documentation for evaluation

History:

 This message has been forwarded.

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter identification project. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding the project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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026977



Eileen L. Kuala/EAC/GOV  
04/23/2007 04:06 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc

Subject Re: Fw: documentation for evaluation

History This message has been replied to.

yep, I have already sent most of my emails to Curtis and he said they have been helpful.

Shall I look through yours as well?

Elle L.K. Collver  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
04/23/2007 03:59 PM

To "Elle Collver" <ecollver@eac.gov>  
cc

Subject Fw: documentation for evaluation

We need to start looking. I am sure you already have. Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Curtis Crider  
----- Original Message -----

**From:** Curtis Crider  
**Sent:** 04/23/2007 03:24 PM EDT  
**To:** EAC Personnel  
**Subject:** documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter identification project. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding the project. Electronic documents can be sent to an e-mail account that we have set up- eacon@eac.gov. If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider

026978



Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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Curtis Crider/EAC/GOV

04/25/2007 01:26 PM

To EAC Personnel

cc

bcc

Subject Investigation

Mr. Eric Miller from the U.S. Department of the Interior, Office of Inspector General will be conducting the investigation of the EAC's handling of the voter fraud report and voter identification report. He will begin conducting interviews within the next couple of days. He will be assisted by Mr. Joe Ansnick.

If you have any questions concerning this matter, please feel free to contact me.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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026980



Curtis Crider/EAC/GOV

04/25/2007 01:29 PM

To EAC Personnel

cc

bcc

Subject Investigation

The investigator's name is Eric Myers - sorry for the confusion.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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---

Mr. Eric Miller from the U.S. Department of the Interior, Office of Inspector General will be conducting the investigation of the EAC's handling of the voter fraud report and voter identification report. He will begin conducting interviews within the next couple of days. He will be assisted by Mr. Joe Ansnick.

If you have any questions concerning this matter, please feel free to contact me.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

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026981



Elieen L. Collver/EAC/GOV  
04/27/2007 04:04 PM

To Curtis Crider/EAC/GOV@EAC  
cc ddauidson@eac.gov  
bcc

Subject memo

History:

 This message has been replied to.

Hello Curtis:

I was reviewing the memo that you brought to the Chair today regarding the research on Voting Fraud and Voter Intimidation. I have sent electronic and hard copies to the commissioners and senior staff. However, I was wondering if there is going to be a separate memo addressing the Voter ID issues. Per your request the staff is in the process of sending emails to your designated inbox and all of those issues. Please advise.

Many thanks,  
Elle

Elle L.K. Collver  
Special Assistant to the Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
office: (202) 566-2256  
fax: (202) 566-1392  
blackberry: (202) 294-9251

026982

Jeannie Layson/EAC/GOV  
04/27/2007 04:54 PM

To EAC Personnel  
cc  
bcc  
Subject Voter ID and Vote Fraud and Voter Intimidation IG Review  
Update

Hello everyone,

The chair wanted to distribute the attached memo from the IG, which contains guidance about how we proceed during the review of the voter ID and the vote fraud and voter intimidation research projects. She will continue to keep staff informed as this review moves forward, and she thanks everyone for their continued cooperation and hard work.



IG Memo to Chair on Review of Studies ( 4-27-07 ).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](http://www.eac.gov)

026983



**Deliberative Process  
Privilege**

**U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF INSPECTOR GENERAL  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005**

April 27, 2007

**Memorandum**

**To: Donetta Davidson  
Chair, U.S. Elections Commission**

**From: Curtis Crider *Curtis Crider*  
Inspector General**

**Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector  
General Investigation of the Voting Fraud and Voter Intimidation Report**

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon it is completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

026984

Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of their contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.



DeAnna M. Smith/EAC/GOV  
05/01/2007 09:46 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Elieen L. Colver/EAC/GOV@EAC,  
fms.eacfabre@yahoo.com, Sheila A.  
Banks/EAC/GOV@EAC, Stephanie  
bcc

Subject Tally Vote Matter

Good Morning,

The tally vote dated 4/30/07, Authority to Proceed with Side by Side Analysis of Draft Voter Fraud and Intimidation Report with EAC Election Crimes Report and Agreement to Release Draft with the Completed Side by Side Analysis, is withdrawn.

Thank You

DeAnna M. Smith  
Paralegal Specialist  
Office of the General Counsel  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, D.C. 20005  
202-566-3117 (phone)  
202-566-1392 (fax)  
[www.eac.gov](http://www.eac.gov)

026936



Bryan Whitener/EAC/GOV  
05/10/2007 05:45 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 5-10-07, Thurs )

Commissioners:

Today we had the following media inquiries:

(1) Leslie Robinson, a reporter for the news blog, ColoradoConfidential.com inquired about the rules and regulations that EAC board members must adhere to. She said that one of the EAC members from Colorado, Dan Kopelman, has recently been cited by the Secretary of State for his business of selling voter lists and consulting partisan candidates. She asked if these infractions cause Kopelman to withdraw from the EAC board. We explained that, according to SEC. 213 of the Help America Vote Act of 2002 (HAVA), there are two EAC Standards Board representatives from each state, that one is a local official, one is a state official and that both individuals represent their state on the Board. We said that the state representatives are selected by the Chief State election official from each state. We said that, with respect to Colorado, Mr. Kopelman was selected to serve on the Board by Colorado Secretary of State Michael Coffman. We suggested Ms. Robinson contact their office for questions regarding the appointment of state representatives from Colorado.

(2) Rose Marie Berger, Associate Editor of Sojourners/Call to Renewal, asked for the document on voter fraud authored by Tova Wang and Job Serebrov. We replied that our Inspector General is currently reviewing the circumstances surrounding this research and noted page two of the following memo from the chair. We said that when that process is complete we'll be glad to discuss it further. 04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

###

026987

Bryan Whitener/EAC/GOV  
05/11/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 5-11-07, Frid )

Commissioners:

Today we had the following media inquiries:

(1) Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

- 1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
- 2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

We forwarded her questions to Curtis and replied to Ms. Cox that the chair has asked our Inspector General to review the circumstances surrounding this research project, as well as research done about voter ID. We said he has requested that EAC not comment on either one of these projects while his review is ongoing. We referred her to the following link: [here](#). and said we'd be glad to make sure she receives the IG's review when it is completed.

(2) Jenna Portnoy of the Doylestown Intelligencia in Bucks Co., PA called again to ask about EAC's progress in determining the status of Pennsylvania's 102 funds. She wants to know the amount of money, if any, that they will have to return. We said that EAC is still reviewing the certifications submitted by the states and we hope to have this process completed as soon as possible. We said we are also evaluating all the reports submitted by the states regarding their 101 and 251 funds expenditures.

026988

Bryan Whitener/EAC/GOV  
05/14/2007 06:18 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 5-14-07, Mon )

Commissioners:

Today Meg Cox, a freelance journalist in Chicago, sent us the same two questions she sent us last Friday (see below). She had not been satisfied with our response. She is working on an article about voter fraud and voter ID laws. She said she is concerned that journalists are receiving a substitute report from EAC and not the real thing. We replied that we directed her to the one and only report adopted by EAC -- Election Crimes: An Initial Review and Recommendations for Future Study -- We noted that it contains clear language about the role of the consultants, identifies them by name and that their bios are included in the EAC report as Appendix D here. We said we would notify her when the IG has completed his review of this subject. We also noted the following contents of the report:

- Page one: "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.
- Page three: To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report.
- Page four: 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.

###

**BACKGROUND: Last Friday's Q&A.**

Meg Cox, a freelance journalist in Chicago is working on an article about voter fraud and voter ID laws. She asked the following two questions:

- 1) Is the EAC still sending its "Elections Crimes" report to journalists who request the report on voter fraud and intimidation authored by Wang and Serebrov?
- 2) If the answer to #1 is yes, is the EAC still sending the "Election Crimes" report in these cases without comment--in other words, without indicating that it is not the Wang/Serebrov report?

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026989

Jeannie Layson/EAC/GOV  
05/10/2007 06:57 AM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Letter Regarding Brennan Center's FOIA Request

History: This message has been replied to

Guess Wendy changed her mind about giving me until the end of the week...

-----  
Sent from my BlackBerry Wireless Handheld

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

From: "Rowan Wilson" [redacted]  
Sent: 05/09/2007 10:14 PM AST  
To: Jeannie Layson  
Cc: "Yani Indrajana Ho" [redacted]; perez@ [redacted], wendy [redacted]  
Subject: Letter Regarding Brennan Center's FOIA Request

Dear Ms. Layson:

My firm is representing the Brennan Center in connection with the FOIA requests it has made to the EAC. Attached, for your convenience, is a letter we have sent to you today by regular mail.

Sincerely,

Rowan Wilson

This e-mail is confidential and may be privileged. Use or disclosure of it by anyone other than a designated addressee is unauthorized. If you are not an intended recipient, please delete this e-mail from the computer on which you received it.




Brennan Center Letter to EAC 05-09-2007.pdf

026990

Jeannie Layson/EAC/GOV  
05/10/2007 07:21 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC, "Jeannie Layson"  
<jlayson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
cc "Staci Fabre" <[REDACTED]>

bcc

Subject Re: Have we considered putting FOIA responses on the  
web? 

History:  This message has been replied to.

Yes, we have talked about setting up a FOIA reading room like some other agencies. Those cull the most frequently asked for info, but don't post everything. It's just a function of getting caught up to do that. However, I'm open to posting everything.


-----  
Sent from my BlackBerry Wireless Handheld  
Rosemary E. Rodriguez  
----- Original Message,-----

From: Rosemary E. Rodriguez  
Sent: 05/10/2007 07:17 PM EDT  
To: Jeannie Layson; Thomas Wilkey  
Cc: "Staci Fabre" <[REDACTED]>  
Subject: Have we considered putting FOIA responses on the web?

That would cut down on the number we are doing and make us more transparent,


026991

Jeannie Layson/EAC/GOV  
05/10/2007 07:35 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Have we considered putting FOIA responses on the web? 


And I really appreciate you saying that. Usually I do pretty well under pressure. I think I'm just having a couple of bad days! I'm already in a better mood.

-----  
Sent from my BlackBerry Wireless Handheld  
Rosemary E. Rodriguez  
----- Original Message -----

**From:** Rosemary E. Rodriguez  
**Sent:** 05/10/2007 07:28 PM EDT  
**To:** Jeannie Layson; Thomas Wilkey; Donetta Davidson  
**Cc:** "Staci Fabre"   
**Subject:** Re: Have we considered putting FOIA responses on the web?


If we announced it, maybe we could stem the flow. We should discuss. And I do appreciate how stressful things are for you right now. My Mayor used to say that press was the hardest job in the ofc. He was under siege his first term (he served 3) and it feels for me a little like deja vu all over again because he was very misunderstood

Best.  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 05/10/2007 07:21 PM EDT  
**To:** Rosemary Rodriguez; Jeannie Layson; Thomas Wilkey  
**Cc:** "Staci Fabre"   
**Subject:** Re: Have we considered putting FOIA responses on the web?

Yes, we have talked about setting up a FOIA reading room like some other agencies. Those cull the most frequently asked for info, but don't post everything. It's just a function of getting caught up to do that. However, I'm open to posting everything.

-----  
Sent from my BlackBerry Wireless Handheld  
Rosemary E. Rodriguez  
----- Original Message -----

**From:** Rosemary E. Rodriguez  
**Sent:** 05/10/2007 07:17 PM EDT  
**To:** Jeannie Layson; Thomas Wilkey  
**Cc:** "Staci Fabre"   
**Subject:** Have we considered putting FOIA responses on the web?

That would cut down on the number we are doing and make us more transparent,

026992

Thomas R. Wilkey/EAC/GOV  
05/11/2007 11:16 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Letter

History:  This message has been replied to.

Commissioners;

Based on our conversation yesterday concerning the letter from the letter from the Attorney representing the Brennan Center Gavin has drafted the attached letter as our response.

Since this letter will also be copied to several members of Congress I thought it best to have you look it over before it goes out.

Please let me know if you have any concerns, I'd like to get it out COB today.

And if I don't see you today...Have a great Mother's Day

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

----- Forwarded by Thomas R. Wilkey/EAC/GOV on 05/11/2007 11:09 AM -----

Gavin S. Gilmour/EAC/GOV

05/11/2007 09:01 AM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Letter

Tom,

For your review and policy determination.

GG



Brennan Center May 9th -2.doc

Gavin S. Gilmour

026993

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.

026994



Caroline C. Hunter/EAC/GOV  
05/11/2007 12:21 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Gracia

cc

bcc

Subject Re: Letter 

Looks good to me, thanks Tom and Gavin.

Thomas R. Wilkey

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

**From:** Thomas R. Wilkey  
**Sent:** 05/11/2007 11:16 AM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman  
**Subject:** Fw: Letter

Commissioners;

Based on our conversation yesterday concerning the letter from the letter from the Attorney representing the Brennan Center Gavin has drafted the attached letter as our response.

Since this letter will also be copied to several members of Congress I thought it best to have you look it over before it goes out.

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And if I don't see you today...Have a great Mother's Day

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TWilkey@eac.gov

----- Forwarded by Thomas R. Wilkey/EAC/GOV on 05/11/2007 11:09 AM -----

Gavin S. Gilmour/EAC/GOV

05/11/2007 09:01 AM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV@EAC

cc

Subject Letter

Tom,

For your review and policy determination.

026995

GG


[attachment "Brennan Center May 9th -2.doc" deleted by Caroline C. Hunter/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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026996

Thomas R. Wilkey/EAC/GOV  
05/11/2007 02:08 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Just sent u a fax 

History:  This message has been replied to

Got it...thanks

Gavin advises me that we are required to have a FOIA reading room and so we will do that but may not want to admit that we haven't up to now.

Thanks  
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  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
05/11/2007 01:26 PM

To "Tom Willkey" <TWilkey@eac.gov>  
cc  
Subject Just sent u a fax

026997

Thomas R. Wilkey/EAC/GOV  
05/11/2007 02:32 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Just sent u a fax 

History:  This message has been replied to.

It's already been set up on the redesigned website which Jeannie hopes to unveil next week when we get out from under this paper.

The FOIA regulations have been on the Counsel's "to do" list but with everything else going on has not been completed.


We have two law clerks coming on for the summer in a couple weeks and this will be an excellent project for them to do.

Thanks  
Tom

You are supposed to be relaxing

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  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
05/11/2007 02:11 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV  
cc  
Subject Re: Just sent u a fax 

We'd better get it up before we get dinged for not having it up!

Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 05/11/2007 02:08 PM EDT  
**To:** Rosemary Rodriguez  
**Subject:** Re: Just sent u a fax

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Gavin advises me that we are required to have a FOIA reading room and so we will do that but may not

028998

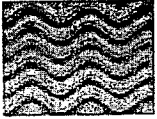
want to admit that we haven't up to now.  
Thanks  
Tom

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Executive Director  
US Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
05/11/2007 01:26 PM

To "Tom Wilkey" <TWilkey@eac.gov>  
cc  
Subject Just sent u a fax

026999



Bert A. Benavides/EAC/GOV  
05/14/2007 04:13 PM

To Donetta L. Davidson/EAC/GOV, Rosemary E.  
Rodriguez/EAC/GOV@EAC, chunter@eac.gov, Gracia  
Hillman/EAC/GOV, Juliet E. Thompson-Hodgkins/EAC/GOV,  
cc Elieen L. Collver/EAC/GOV@EAC, sfabre@eac.gov,  
Stephanie Wolson/EAC/GOV@EAC, [REDACTED]  
bcc

Subject Response to lawyers for Brennan Center

Attached is the letter sent from Tom to the attorneys for the Brennan Center for Justice. Letter was faxed this morning and the hard copy is being mailed this afternoon.

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



Brennan Ctr - Response to 5-09-07 ltr.doc

027000

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

bcc

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.  
Suite 1100  
Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
[www.eac.gov](http://www.eac.gov)  
[rrodriguez@eac.gov](mailto:rrodriguez@eac.gov)

027001

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

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Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

027002



Rosemary E.  
Rodriguez/EAC/GOV  
03/30/2007 03:23 PM

To ddavidson@eac.gov, Gracia Hillman/EAC/GOV@EAC,  
chunter@eac.gov  
cc TWilkey@eac.gov  
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 03:22 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

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How can I get this on our agenda?

Rosemary E. Rodriguez  
Commissioner  
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Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

027003



"Rosemary Rodriguez"  
<rosemaryrod2003@yahoo.com>

04/14/2007 01:04 PM

To rrodriguez@eac.gov

cc

bcc

Subject Fw: Draft Letter w/edits

History:  This message has been forwarded

----- Forwarded Message -----

From: "ghillman@eac.gov" <ghillman@eac.gov>

To: jlayson@eac.gov

Cc: Ddavidson@eac.gov; chunter@eac.gov; rosemaryrod2003@eac.gov; twilkey@eac.gov; jhodgkins@eac.gov

Sent: Friday, April 13, 2007 5:59:10 PM

Subject: Draft Letter w/edits

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

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027004

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project, which was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries from the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at the public meetings of the EAC Standards Board and EAC Board of Advisors. Each board provided feedback on the progress of the study and the direction that it should take. Following those meetings, the project's working group convened and likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were compiled and reviewed by the contract employees. In addition, they provided a draft report of the summaries of the interviews for EAC's review and consideration.

EAC staff reviewed the material, briefed the commissioners, including at our October public meeting and presented for commissioner consideration a report, *Election Crimes: An Initial Review and Recommendations for Future Study*, which was adopted at our December 2006 public meeting.

After the release of EAC's report there was some debate about whether EAC should release the draft provided by our contracted employees. The Board of Advisors considered, but did not pass, a resolution urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, which released the draft report this week.

Recently, there has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in our election crimes report. After receiving the information from the consultants, EAC conducted due diligence. As you will see in the consultants' draft,

they reached conclusions in their summaries that were based almost entirely on the interviews they conducted with 24 people, not on the entire body of work they collected. EAC found the individual accounts were informative and they helped define what issues we should examine in moving forward.

We understand that the topics of voter fraud and voter intimidation are hotly debated and often divisive. We assure you that the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but 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.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We are currently reviewing our contracting policy and internal procedures to make certain that EAC and its consultants are clear on the products to be delivered. We will also expedite the process in which we complete these projects.

We have always taken input from our advisory boards, Congress, and the public very seriously, and we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Thank you for your service, your commitment to the election process and your support of EAC.

Also attached is a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

cc: Project Working Group

Rosemary E.  
Rodriguez/EAC/GOV  
04/14/2007 01:44 PM

To ddavidson@eac.gov, Gracia Hillman/EAC/GOV@EAC,  
Chunter@eac.gov, twikley@eac.gov, jhodgkins@eac.gov  
cc  
bcc  
Subject my revisions to boards letter.



AdvBdsletterDRAFT.doc

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](http://www.eac.gov)  
[rrodriguez@eac.gov](mailto:rrodriguez@eac.gov)

027007

**Deliberative Process  
Privilege**

Draft comments submitted by Rodriguez, April 14, 2007; 1:45 pm

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project, which was submitted by two contracted research consultants, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries from the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

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On March \_\_, 2007, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, which released the draft report this week. The release of the draft report by members of Congress has made it widely available. Thus we attach it to this letter. We value your service on the Board of Advisors and believe that you should receive the draft directly from the EAC, and not a secondary source.

Recently, there has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in our election crimes report. After receiving the information from the consultants, EAC conducted due diligence. As you will see in the consultants' draft, they reached conclusions in their summaries that were based almost entirely on the interviews they conducted with 24 people, not on the entire body of work they collected. EAC found the individual accounts were informative and they helped define what issues we should examine in moving forward.

We understand that the topics of voter fraud and voter intimidation are hotly debated and often divisive, even among members of the EAC. We assure you that we believe the process we took to review all of the materials and adopt a 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.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We are currently reviewing our contracting policy and internal procedures to make certain that EAC and its consultants are clear on the products to be delivered. We will also expedite the process in which we complete these projects.

We will continue to take input from our advisory boards, Congress, and the public very seriously, and we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Thank you for your service, your commitment to the election process and your support of EAC.

Also attached is a copy of EAC's statement on this issue, as well as a statement issued by Congressmen



Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

cc: Project Working Group



"Rosemary Rodriguez"  
<rosemaryrod2003@yahoo.com>

04/14/2007 01:04 PM

To rrodriguez@eac.gov

cc

bcc

Subject Fw: Draft Letter w/edits

History: This message has been forwarded.

----- Forwarded Message -----

From: "ghillman@eac.gov" <ghillman@eac.gov>

To: jlayson@eac.gov

Cc: Ddavidson@eac.gov; chunter@eac.gov; rosemaryrod2003 [REDACTED]; twilkey@eac.gov;

jhodgkins@eac.gov

Sent: Friday, April 13, 2007 5:59:10 PM

Subject: Draft Letter w/edits

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
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Tel: 202-566-3100  
Fax: 202-566-1392  
www.eac.gov

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027012

**Deliberative Process  
Privilege**

Draft comments submitted by Rodriguez, April 14, 2007; 1:45 pm

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

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Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

cc: Project Working Group

Rosemary E.  
Rodriguez/EAC/GOV  
04/14/2007 01:45 PM

To twilkey@eac.gov  
cc  
bcc  
Subject Fw: Draft Letter w/edits

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 04/14/2007 01:44 PM -----



"Rosemary Rodriguez"

[Redacted]

04/14/2007 01:04 PM

To rrodriguez@eac.gov  
cc  
Subject Fw: Draft Letter w/edits

----- Forwarded Message -----

From: "ghillman@eac.gov" <ghillman@eac.gov>  
To: jlayson@eac.gov  
Cc: Ddavidson@eac.gov; chunter@eac.gov; rosemaryrod20 [Redacted]; twilkey@eac.gov;  
jhodgkins@eac.gov  
Sent: Friday, April 13, 2007 5:59:10 PM  
Subject: Draft Letter w/edits

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

027017

www.eac.gov

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027018



April 13, 2007

EAC Board of Advisors  
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project, which was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries from the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at the public meetings of the EAC Standards Board and EAC Board of Advisors. Each board provided feedback on the progress of the study and the direction that it should take. Following those meetings, the project's working group convened and likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were compiled and reviewed by the contract employees. In addition, they provided a draft report of the summaries of the interviews for EAC's review and consideration.

EAC staff reviewed the material, briefed the commissioners, including at our October public meeting and presented for commissioner consideration a report, *Election Crimes: An Initial Review and Recommendations for Future Study*, which was adopted at our December 2006 public meeting.

After the release of EAC's report there was some debate about whether EAC should release the draft provided by our contracted employees. The Board of Advisors considered, but did not pass, a resolution urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, which released the draft report this week.

Recently, there has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in our election crimes report. After receiving the information from the consultants, EAC conducted due diligence. As you will see in the consultants' draft,

they reached conclusions in their summaries that were based almost entirely on the interviews they conducted with 24 people, not on the entire body of work they collected. EAC found the individual accounts were informative and they helped define what issues we should examine in moving forward.

We understand that the topics of voter fraud and voter intimidation are hotly debated and often divisive. We assure you that the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but 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.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We are currently reviewing our contracting policy and internal procedures to make certain that EAC and its consultants are clear on the products to be delivered. We will also expedite the process in which we complete these projects.

We have always taken input from our advisory boards, Congress, and the public very seriously, and we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

Thank you for your service, your commitment to the election process and your support of EAC.

Also attached is a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner

Rosemary Rodriguez, Commissioner

cc: Project Working Group

**Deliberative Process  
Privilege**

April 13, 2007

EAC Board of Advisors  
EAC Standards Board

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Dear Members of the EAC Standards Board and EAC Board of Advisors:

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Thank you for your service, your commitment to the election process and your support of EAC.

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Sincerely,

Donetta Davidson, Chair

Gracia Hillman, Commissioner

Caroline Hunter, Commissioner


Rosemary Rodriguez, Commissioner

cc: Project Working Group

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 02:59 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject Re: Draft response to Tova Wang's lawyer 

Isn't Peggy away on sick leave? Why do we direct her to Peggy?

Gavin S. Gilmour

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

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 03:04 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter;  
Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Draft response to Tova Wang's lawyer

Pursuant to Commissioner Davidson's request, attached is the draft response to Tova Wang's lawyer.


[attachment "Wang Ltr 17apr07.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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027023

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 03:29 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
bcc  
Subject Re: Draft response to Tova Wang's lawyer 

I haven't seen her for weeks. But I am in another corner of the office. Perhaps I am ill-informed.

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/20/2007 03:30 PM EDT  
**To:** Rosemary Rodriguez  
**Cc:** Caroline Hunter; Donetta Davidson; Gavin Gilmour; Gracia Hillman;  
Thomas Wilkey  
**Subject:** Re: Draft response to Tova Wang's lawyer

Commissioner Rodriguez,

Gavin's Blackberry is not working properly so he asked that I forward to you all the following response:

Julie,


My Blackberry keeps freezing up, again. Perhaps you could forward my comments.

Peggy was proposed as the point of contact for Ms. Wang because she was the original project manager and Tova's prior supervisor/COTR. Peggy would obviously staff requests. As for Peggy's status, I was under the impression that she was still an active employee, but obviously defer that issue to Tom.

GG

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 02:59 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC  
Subject Re: Draft response to Tova Wang's lawyer 

Isn't Peggy away on sick leave? Why do we direct her to Peggy?

027024

Gavin S. Gilmour

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

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 03:04 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter;  
Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Draft response to Tova Wang's lawyer

Pursuant to Commissioner Davidson's request, attached is the draft response to Tova Wang's lawyer.

[attachment "Wang Ltr 17apr07.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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027025

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 05:46 PM

To "Staci Fabre" <[REDACTED]>  
cc  
bcc  
Subject Fw: Draft response to Tova Wang's lawyer

Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 03:04 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter;  
Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Draft response to Tova Wang's lawyer

Pursuant to Commissioner Davidson's request, attached is the draft response to Tova Wang's lawyer.



Wang Ltr 17apr07.doc

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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**Deliberative Process  
Privilege**

April 17, 2007

James P. Joseph  
Arnold & Porter L.L.P.  
655 Twelfth Street, NW  
Washington, DC 20004-1206

Mr. Joseph:

This letter is in response to your April 16, 2007 inquiry in which you request that your client, Ms. Tova Wang, be authorized by the U.S. Election Assistance Commission (EAC) to discuss certain matters pertaining to her prior employment with the agency.

As I am sure you are aware, Ms. Wang was employed by the EAC under its authority to hire experts and consultants pursuant to 42 U.S.C. §3109 (as implemented by 5 C.F.R. §304). As such, her agreement with the EAC created a limited employee/employer relationship. This is clearly stated in her contract. As an employee Ms. Wang has a duty to the Commission. Without direction from the EAC, Ms. Wang has no authority to speak for the EAC, release non-public information or discuss privileged matters with third parties. As you note in your letter, this concept is also clearly stated in her employment contract. The duties and responsibilities that come with Federal service are essential to the proper functioning of our government.

Ultimately, however, Ms. Wang's responsibilities should not have a significant impact on her ability to discuss her personal opinions on voter fraud. Per her employment contract, the project she worked on was focused on collecting existing information, defining terms and proposing future research methodology so that EAC could conduct a future research project on voter fraud and intimidation. As a result, the information gathered by Ms. Wang and other EAC employees is nothing more than a collection of articles, books and opinions that are publicly available. In fact, the EAC has published much of this information as an attachment to the final report which is available on our Web site. Ms. Wang is free to provide her personal opinion on voter fraud to anyone she wishes. Her only limitation is in speaking for the EAC or releasing privileged documents or information.

If Ms. Wang has questions concerning specific requests for information, or is requested to speak

027027

on behalf of the EAC, she may contact her prior supervisor, Ms. Peggy Sims at (202)566-3127 for assistance.


Sincerely,

Gavin S. Gilmour  
Deputy General Counsel

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 05:49 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject Re: Draft response to Tova Wang's lawyer 

You know where I stand on this issue but, again, I think we should grant her request. We appear to be stonewalling and I do not think that is good for the agency nor is it good policy. I understand that we have rights to enforce the contract but we can also waive those rights and I think we ought to in this instance.

Gavin S. Gilmour

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

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 03:04 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter; Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Draft response to Tova Wang's lawyer

Pursuant to Commissioner Davidson's request, attached is the draft response to Tova Wang's lawyer.

[attachment "Wang Ltr 17apr07.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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027029

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 05:49 PM

To "Staci Fabre" [REDACTED]  
cc  
bcc  
Subject Fw: Draft response to Tova Wang's lawyer

Rosemary E. Rodriguez

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

**From:** Rosemary E. Rodriguez  
**Sent:** 04/20/2007 05:49 PM EDT  
**To:** Gavin Gilmour; Donetta Davidson; Gracia Hillman; Caroline Hunter;  
Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Re: Draft response to Tova Wang's lawyer

You know where I stand on this issue but, again, I think we should grant her request. We appear to be stonewalling and I do not think that is good for the agency nor is it good policy. I understand that we have rights to enforce the contract but we can also waive those rights and I think we ought to in this instance.

Gavin S. Gilmour

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

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 03:04 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter;  
Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Draft response to Tova Wang's lawyer

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[attachment "Wang Ltr 17apr07.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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027030

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 05:49 PM

To "Staci Fabre" <fms.eacfabre@yahoo.com>  
cc  
bcc  
Subject Fw: Draft response to Tova Wang's lawyer

Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 03:04 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter;  
Thomas Wilkey  
**Cc:** Juliet Hodgkins  
**Subject:** Draft response to Tova Wang's lawyer

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Wang Ltr 17apr07.doc

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 06:51 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Thomas R.  
cc  
bcc  
Subject Re: Draft response to Tova Wang's lawyer 

Tom, is Peggy on sick leave?

Not sure if I sent this--I believe we should grant Tova's request. We are stonewalling and I do not think that is good for the agency nor is it good policy. I understand that we have rights to enforce the contract but we can also waive those rights and I think we ought to in this instance.

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**To:** Donetta Davidson; Rosemary Rodriguez; Gracia Hillman; Caroline Hunter;  
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[attachment "Wang Ltr 17apr07.doc" deleted by Rosemary E. Rodriguez/EAC/GOV]

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United States Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3100

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027032

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

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

027033



*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 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.*

###



Gracia Hillman/EAC/GOV

04/16/2007 11:28 AM

To Jeannie Layson/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 

History:

 This message has been replied to.

Jeannie:

The press release looks okay to me. I appreciate that you are being very careful with the words we use.


If there are changes to any of the words, I want to see them before giving final approval.

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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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.  
bcc  
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,  
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EAC IGRrequest 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

027037



*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 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.*

###

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.  
bcc  
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.  
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](http://www.eac.gov)

027040



*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

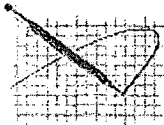


laws after concluding that initial research it received in a report was not sufficient to draw any conclusions. The commission declined to adopt the report, but released all of the data to the public. The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton 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 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.*

###



Curtis Crider/EAC/GOV

04/20/2007 11:46 AM

To Donetta L. Davidson/EAC/GOV@EAC, jhodgkins@eac.gov,  
Margaret Sims/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,

cc

bcc

Subject evaluation of contracting

History

✉ This message has been forwarded.

To complete our evaluation of the contracting process and related issues for the voter fraud research and voter intimidation and voter identification research projects, we will need copies of all e-mails and a number of documents related to the projects including copies of all of the various drafts (versions) of the reports. I am requesting that all EAC personnel be notified that they are to preserve all of the documents including e-mails related to the projects. We are in the process of setting up an e-mail account to receive the documents, It is imperative that all documents related to the projects be preserved. As soon as the account is set up we will notify you of the address.

In addition, we are requesting access to the backup e-mail files maintained by GSA and EAC. As a result, we are requesting that no backup tapes or files be destroyed.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

blackberry 202 725 0969

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

027043

Curtis Crider/EAC/GOV  
04/23/2007 02:27 PM

To EAC Personnel  
cc  
bcc  
Subject documentation for evaluation

History:  This message has been forwarded.

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

027044



Curtis Crider/EAC/GOV

04/23/2007 02:33 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

A question has been raised on the e-mails.

Q. Are these emails among staff, to recipients outside the office, or both?

A. We would like ALL e-mails including those among staff and recipients outside of the office.

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

---

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov). If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

027045



Curtis Crider/EAC/GOV

04/23/2007 03:24 PM

To EAC Personnel

cc

bcc

Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter identification project. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding the project. Electronic documents can be sent to an e-mail account that we have set up- [eacon@eac.gov](mailto:eacon@eac.gov).

If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider  
Office of Inspector General, Election Assistance Commission  
Phone - (202) 566-3125  
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.

027046

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

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 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report. This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way. I will discuss this further with each of you between now and tomorrow. I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

027047

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

bcc

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.  
Suite 1100  
Washington, D.C. 20005  
Telephone: 202-566-3104  
Facsimile: 202-566-3127  
www.eac.gov  
rrodriguez@eac.gov

0211048

Gavin S. Gilmour/EAC/GOV  
04/20/2007 03:04 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV, Gracia Hillman/EAC/GOV@EAC,  
Caroline C. Hunter/EAC/GOV, Thomas R.  
cc Juliet E. Hodgkins/EAC/GOV

bcc

Subject Draft response to Tova Wang's lawyer

History:  This message has been replied to and forwarded:

Pursuant to Commissioner Davidson's request, attached is the draft response to Tova Wang's lawyer.



Wang Ltr 17apr07.doc

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.

027049



**Deliberative Process  
Privilege**

Attorney-Client  
Privilege

April 17, 2007

James P. Joseph  
Arnold & Porter L.L.P.  
655 Twelfth Street, NW  
Washington, DC 20004-1206

Mr. Joseph:

This letter is in response to your April 16, 2007 inquiry in which you request that your client, Ms. Tova Wang, be authorized by the U.S. Election Assistance Commission (EAC) to discuss certain matters pertaining to her prior employment with the agency.

As I am sure you are aware, Ms. Wang was employed by the EAC under its authority to hire experts and consultants pursuant to 42 U.S.C. §3109 (as implemented by 5 C.F.R. §304). As such, her agreement with the EAC created a limited employee/employer relationship. This is clearly stated in her contract. As an employee Ms. Wang has a duty to the Commission. Without direction from the EAC, Ms. Wang has no authority to speak for the EAC, release non-public information or discuss privileged matters with third parties. As you note in your letter, this concept is also clearly stated in her employment contract. The duties and responsibilities that come with Federal service are essential to the proper functioning of our government.

Ultimately, however, Ms. Wang's responsibilities should not have a significant impact on her ability to discuss her personal opinions on voter fraud. Per her employment contract, the project she worked on was focused on collecting existing information, defining terms and proposing future research methodology so that EAC could conduct a future research project on voter fraud and intimidation. As a result, the information gathered by Ms. Wang and other EAC employees is nothing more than a collection of articles, books and opinions that are publicly available. In fact, the EAC has published much of this information as an attachment to the final report which is available on our Web site. Ms. Wang is free to provide her personal opinion on voter fraud to anyone she wishes. Her only limitation is in speaking for the EAC or releasing privileged documents or information.

If Ms. Wang has questions concerning specific requests for information, or is requested to speak

on behalf of the EAC, she may contact her prior supervisor, Ms. Peggy Sims at (202)566-3127 for assistance.


Sincerely,

Gavin S. Gilmour  
Deputy General Counsel

027050

Attorney-Client  
Privilege

Thomas R. Wilkey/EAC/GOV  
05/11/2007 02:08 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Just sent u a fax 

History:  This message has been replied to

Got it....thanks

Gavin advises me that we are required to have a FOIA reading room and so we will do that but may not want to admit that we haven't up to now.

Thanks

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  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
05/11/2007 01:26 PM

To "Tom Willkey" <TWilkey@eac.gov>  
cc  
Subject Just sent u a fax

027051

We have received your letter dated May 9, 2007, on behalf of your client, the Brennan Center for Justice ("Brennan Center"): We disagree with your client's perception that any EAC search of its records was unreasonable. While the Election Assistance Commission ("EAC") is a tiny agency and often struggles to meet the numerous requests it receives for agency documents, we take each request seriously and strive to be responsive. The EAC takes exception to the procedural, substantive and legal conclusions and representations made in your letter. We believe our search for records was conducted reasonably. Nevertheless, the EAC has decided that the best way to accommodate your request is to perform a new search for documents responsive to your request. We believe a new search will lay to rest your client's perception that our initial search was unreasonable.

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troubled over

The EAC has no desire to withhold information properly releasable under FOIA. Based upon the distribution of your letter, it is important for our agency to demonstrate its existing and continued policy of responsiveness by going beyond what is required and re-conducting the search that you allege was unreasonable. ✓ The EAC will essentially start over with regard to this request. As you know, Ms. Jeannie Layson has been in constant contact with Ms. Wendy Weiser of the Brennan Center during

See comments  
on next  
page.

Comment [s1]: Does "constant" accurately represent Jeannie's communication with Ms. Weiser?

the pendency of its FOIA request. In fact, Ms. Layson recently contacted Ms. Weiser to inform her that that she had found additional responsive information in the course of EAC records reviews for similar requests for information. Additionally, Ms. Layson and Ms. Weiser were working together to provide any e-mail attachments or similar documents desired by the Brennan Center which were identified, but omitted in the original response. Due to the procedural and substantive confusion and disagreements surrounding this matter, we will terminate these piecemeal activities in order to prevent any future misunderstandings.


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The EAC will conduct a second search and review of its documents. We will not charge the Brennan Center for the document collection, review or copying. For the purpose of clarity and to avoid any confusion, based upon the Brennan Center's previous requests it is seeking:

ALSO, I believe this is a great opportunity to address the larger audience by including our desire (if it exists) to improve EAC transparency by setting up - in the very near future - a FOIA reading room. I implore you to turn this correspondence into a progressive step for the agency!

Rosemary Rodriguez

Margaret Sims/EAC/GOV  
04/03/2007 06:22 PM

To Jeannie Layson/EAC/GOV@EAC  
cc jthompson@eac.gov, klynndyson@eac.gov, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Please review my responses 

Julie has already raised the point that most concerned me: I don't think it is accurate to say the consultant's recommendations were their findings. The recommendations were a combination of consultant recommendations and working group recommendations for future EAC action. We did not ask the consultants to provide "findings" because this research was never supposed to be the definitive study on the subject. Instead, it was supposed to be an initial effort to see what relevant information is available, to define voting fraud and voter intimidation, and to make recommendations to EAC regarding how to pursue the subject (next steps). --- Peggy

Jeannie Layson/EAC/GOV

04/03/2007 05:33 PM

To psims@eac.gov, jthompson@eac.gov, klynndyson@eac.gov, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc  
Subject Please review my responses  
t

This are questions from a "freelance" reporter who is very hot about the "Tova Wang report." Please let me know if my answers are accurate, and I welcome any suggestions you may have. I need to get your input by COB tomorrow. I am also looking for more clarification on what didn't make it into the fraud report. She is asking if we included all of their "findings" and their "research."

Thanks.

1) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

027054

2) I understood you to say that the December EAC report includes all of the Wang/Serebrov recommendations but not all of the Wang/Serebrov findings. Is that correct? The report does include all of their recommendations, which were their findings, and all of the research they conducted.

3) I understood you to say that EAC staff added results of their own research to the December EAC report. Is that correct? What I said was EAC staff reviewed the report for accuracy, for grammar and added language that reflected the commission's decision to adopt the final version based upon the initial research provided by the consultants.

4) If I'm correct on questions 2 and 3, would it be accurate to say that readers of the December report cannot tell how much of that report does and does not reflect the original Wang/Serebrov findings? The consultants' recommendations are their findings. All of the recommendations are included in the final report, so readers can make the determination regarding the recommendations.

5) I called earlier today requesting the Wang/Serebrov report, and you sent me the December EAC report. I am concerned that if I had not already been researching this closely, I would have thought that you'd sent me the Wang/Serebrov report and would have reported incorrectly that you had. Does the EAC have any comment on this manner of replying to press inquiries? (I contacted you to request the report after I read in the Statesman Journal of Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission didn't widely release the consultants' review, but makes it available on request." Did the EAC indeed give Ms. Cocco a copy of the "consultants' review"? Or has she misunderstood you in the way I'm concerned about?) I sent you a link to the "EAC report" because it is what was adopted by the commission based upon the research conducted by the consultants. The final report clearly states how it was compiled and includes bios for both of the consultants. Regarding Ms. Cocco, I explained the entire process to her. I provided the staff update on the project which was presented at a public meeting in May 2006 and the final report, which is posted on the EAC website. Regarding "this manner of responding to press inquiries," I have forwarded your comments to my supervisor so he can review my performance regarding the handling of your inquiry.

6) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? 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 research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project. For instance, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. In addition, we often ask for input from our Standards Board and Board of Advisors, which combined consist of more than 147 members. If we are using research that will eventually become guidance, we are required by HAVA to seek the input of these boards. Go here for more information about these boards and its members. If the board members have feedback, then we must make the determination whether to incorporate it, and, if so, how to incorporate their changes. If the research is focused on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the

027055

process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

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)

027056



Juliet E. Hodgkins/EAC/GOV

04/03/2007 05:50 PM

To Jeannie Layson/EAC/GOV@EAC

cc Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
bcc

Subject Re: Please review my responses

With regard to # 3 we did add our own research, because theirs was insufficient on the definition of voting fraud and voter intimidation.

On #6, you might want to include is written in a consistent voice. This might seem elementary, but not in this case. The comments about the boards may be confusing, here, since this was not vetted through those boards.

I am comfortable with the idea that their recommendations were their findings, although I am sure that Tova would disagree. These consultant/employees were asked to provide two things: 1) a definition of the phrases "voting fraud" and "voter intimidation" and 2) recommendations on a research methodology to conduct a comprehensive review in this area. To accomplish this, we asked them to review existing information on voting fraud and voter intimidation. They wholly failed to provide a definition -- they provided a compilation -- a statement which would cover every possible connotation of those phrases. No logic or limitation was applied. A definition is by its very nature a limitation. So, we had to completely rework that -- hence the additional research referred to above. We reviewed state laws concerning voting fraud and voter intimidation to come up with a definition of "voting crimes." With regard to the second part of their charge, the consultants, as well as their working group and some of the interviewees, provided recommendations. All 16 of them were included in the final report. We did not adopt all of them, obviously, but we did adopt all or part of 6 of those recommendations.

Other statements that were contained in the report were just that ... statements, summaries, or opinions ... concerning the existing research that was out there on this topic. I would not classify those as "findings."

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

04/03/2007 05:33 PM

To psims@eac.gov, jthompson@eac.gov,  
klyndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
cc

Subject Please review my responses

This are questions from a "freelance" reporter who is very hot about the "Tova Wang report." Please let me know if my answers are accurate, and I welcome any suggestions you may have. I need to get your input by COB tomorrow. I am also looking for more clarification on what didn't make it into the fraud report. She is asking if we included all of their "findings" and their "research."

Thanks.

027057

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6) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? 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 research projects. After EAC receives the initial data, the agency reviews the data for accuracy. What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail? It depends on the project. For instance, if it is information directly related to a mandate within the Help America Vote Act (HAVA), staff will make sure that the information is consistent with the law. In addition, we often ask for input from our Standards Board and Board of Advisors, which combined consist of more

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than 147 members. If we are using research that will eventually become guidance, we are required by HAVA to seek the input of these boards. Go here for more information about these boards and its members. If the board members have feedback, then we must make the determination whether to incorporate it, and, if so, how to incorporate their changes. If the research is focused on election laws throughout the country, we make sure the laws are cited correctly and that state legislatures haven't changed or amended these laws since the research was conducted. (As you probably know, there have been many new election laws introduced at the state level since 2004.) Throughout the process, we review for grammar as well as make sure the document flows and is arranged logically -- the basic tenets of editing.

Jeannie Layson  
U.S. Election Assistance Commission  
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027059

Jeannie Layson/EAC/GOV  
04/03/2007 05:33 PM

To psims@eac.gov, jthompson@eac.gov,  
klyndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc

Subject Please review my responses

This are questions from a "freelance" reporter who is very hot about the "Tova Wang report." Please let me know if my answers are accurate, and I welcome any suggestions you may have. I need to get your input by COB tomorrow. I am also looking for more clarification on what didn't make it into the fraud report. She is asking if we included all of their "findings" and their "research."

Thanks.

1) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

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## Where's the Voter Fraud?

Tova Andrea Wang, The Century Foundation, 12/4/2006

Over the past month, the silence has been deafening.

For the past few years, many on the Right have been vociferously propagating the myth that voter fraud at the polling place is a rampant problem of crisis proportions. But we haven't heard from them lately. In fact, as far as my research can discover (Nexis and Google news searches of multiple relevant terms), there has not been one confirmed report of any of these types of incidents in the 2006 election. Not one. Even the Republican National Committee's vote fraud watch operation in their list of complaints from the 2006 election could not come up with one such case.

If you've been listening to the likes of John Fund, Thor Hearne, Ken Mehlman, and John Lott, you would think non-citizens are lining up to vote at the polls, mischievous partisans are voting multiple times by impersonating other voters, and dead people are voting in polling places across the country. In order to justify their argument that we need all voters to present government issued photo identification at the polls, they claim that this type of fraud is the biggest problem our electoral system confronts. They have been building and building this argument, hammering and hammering away at it to the point that it has now become the prevailing belief of the American public.

I won't go into the recitation of all of the previous research that has been done on what a nonexistent problem polling place fraud is and the fraudulent disenfranchisement narrow voter identification requirements cause among perfectly eligible voters— disproportionately minorities, the poor, the elderly, and voters with disabilities (who by the way, according to conventional wisdom, are also all disproportionately Democratic voters). However, confronted with this continuously growing mountain of evidence undermining their case, it has been interesting to observe the evolution of the Right's spinning of this issue of late.

In recent months, even before this election, slowly recognizing the remarkable weakness of their substantive argument, conservatives' new tack has been to say that even if its true that there is not much polling place fraud, the simple fact that the American people *believe* it is occurring is a problem itself in that it is causing them to lose confidence in the election system. Well, no wonder they have the misguided belief that this is a problem— that's the message the Right has been hammering away at them over the last few years. In any case, the argument goes that we need identification requirements not because they will in actuality do anything to enhance the integrity of the voting process, but because we need to reassure people who have the perception the process is corrupt.

Let me provide just a few examples of this. In their answer in the identification litigation in Indiana, the state outright admitted that there had never been a single, solitary case of polling place fraud in the history of the state. Nevertheless, the state argued. A state may take action to avoid the appearance of fraud as well as its actual occurrence. A Rasmussen Report poll found that 58% of Americans believed that there was a lot or some fraud in American elections, and a Gallup poll after the 2000 election showed that 67% of adults nationally had only some or very little confidence in the way votes are cast and counted in our country. Public perceptions, grounded on publicly reported evidence of fraud such as

that identified above [by the people I mentioned earlier] are a further justification for fraud prevention requirements like Indiana's photo ID law.

During the argument over photo identification before the Supreme Court in Michigan, the assistant attorney general conceded there is no evidence of widespread voter fraud but rather "a concern about it." The esteemed Carter-Baker Commission wrote [http://www.brennancenter.org/stack\\_detail.asp?key=97&subkey=9857](http://www.brennancenter.org/stack_detail.asp?key=97&subkey=9857), "There is no evidence of extensive fraud in US elections or of multiple voting . . . but the electoral system cannot inspire confidence if no safeguards exist to deter or detect fraud or confirm the identity of voters. . . . The problem is not the magnitude of fraud . . . the perception of possible fraud contributes to low confidence in the system."

The Supreme Court may even be starting to buy into this rhetoric. In the recent *Purcell* case regarding Arizona's identification law, Justice Kennedy wrote, "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."

Georgia has twice passed voter identification requirements, in 1997 and 2005, basing the need for such barriers to the vote on instances of vote buying and absentee ballot fraud—two methods of voting that identification would do nothing about. More myths.

Basing voting rights laws upon purposely created misunderstandings of what the issues are is not a sound way to develop public policy. Rather than creating fake problems and then passing disenfranchising laws that purport to address them, we might do a better job of educating the American electorate as to what the real problems are in our voting system, and what they are not. It is only then that we will begin to address the flaws in the election systems that disenfranchise tens of thousands of voters in every major election.

*Toua Wang is a Democracy Fellow at The Century Foundation.*

The Century Foundation conducts public policy research and analyses of economic, social, and foreign policy issues, including inequality, retirement security, election reform, media studies, homeland security, and international affairs. The foundation produces books, reports, and other publications, convenes task forces, and working groups and operates eight informational Web sites. With offices in New York City and Washington, D.C., The Century Foundation is nonprofit and nonpartisan and was founded in 1919 by Edward A. Filene.

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**Deliberative Process  
Privilege**

March 15, 2007

Congressman Jose Serrano, Chairman  
House Appropriations Committee  
Subcommittee on Financial Services  
And General Government  
2227 Rayburn House Office Building  
Washington, DC 20515

**Via Hand Delivery**

RE: Documents requested during March 7, 2007 Hearing

Dear Chairman Serrano:

On March 7, 2007, the United States Election Assistance Commission (EAC) participated in a hearing on the issue of election integrity. During that hearing, Congressman Hinchey, a member of your subcommittee, requested that certain documents be provided to the Committee. We appreciate the Committee's interest in EAC's activities, and we are pleased to respond to the request. Congressman Hinchey requested three documents: 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. For your information, 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). However, we have provided hard copies of these reports as well as the additional information requested.

**Assessment Report for CIBER, Inc.**

The first requested document was the report of EAC's contracted laboratory assessor concerning the assessment and review of CIBER, Inc. under EAC's Interim Laboratory Accreditation Program. It is important to explain the purpose and process of EAC's Interim Accreditation Program, which was put in place after the National Institute of Standards and Technology (NIST) informed EAC that it would not complete its lab assessments until late 2006 or early 2007.

**HAVA Accreditation Program Requirement.** As you know, the Help America Vote Act of 2002 (Section 231(a)(1)) mandates EAC "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." Additionally, the statute provides that laboratories are generally to be accredited in a two step process. First, NIST conducts an evaluation of independent non-Federal test laboratories. NIST selects those laboratories technically qualified to test voting systems to federal standards (2002 Voting System Standards and 2005 Voluntary

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Voting System Guidelines currently) and recommends them to EAC for accreditation. NIST has determined that it will utilize its preexisting National Voluntary Laboratory Accreditation Program (NVLAP) to perform its HAVA evaluation. Second, after receipt of NIST's recommendation, HAVA requires EAC issue a laboratory accreditation through a vote of its commissioners. As part of this process, EAC will conduct a review of its own to address non-technical issues such as conflict of interest, financial stability and recordkeeping.

HAVA required that NIST deliver its first set of recommended labs to the EAC "[n]ot later than 6 months after the Commission first adopts the voluntary voting system guidelines." This deadline passed in June 2006. Four laboratories applied to NIST for evaluation prior to the HAVA deadline, but the required technical reviews and on-site assessments were not completed by the deadline. The first set of NIST recommended laboratories were not received by the EAC until January 18, 2007.

**The Need for EAC Interim Accreditation of Laboratories.** Obviously, the need for EAC to provide accredited laboratories arose well before NIST's January 18 recommendation. First, towards the end of 2005 NIST informed the EAC that the expected timeline to complete required document collection and review, pre-assessment and formal on-site assessments of applicants made it highly unlikely that it would be able to provide a list of recommended laboratories before the end of 2006. This determination made it clear that the EAC would need to have an alternative process in place to provide accredited laboratories if it wished to implement its certification program before that time. Furthermore, in July of 2006, the National Association of State Election Directors (NASED) informed EAC that the organization was terminating its voting system qualification program. NASED is a non-governmental, private organization that accredited laboratories and qualified voting systems to federal standards for more than a decade. The organization's decision to terminate its voting system qualification program just before the 2006 general election required EAC to take immediate action. Without an entity to approve required voting system modifications for the 2006 election, some state election officials would be unable to field their HAVA-compliant systems. To address these situations, EAC was compelled to do two things (1) provide for interim accreditation of testing laboratories and (2) initiate a preliminary, pre-election phase of its voting system testing and certification program.<sup>1</sup> ?

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<sup>1</sup> The pre-election phase of EAC's certification program was not originally planned, but was ultimately required to serve election officials and the public. The program began on July 24, 2006. The purpose of the pre-election phase of the program is to provide voting system manufacturers with a means to obtain a Federal Certification of voting system modifications during the vital period immediately prior to the November 2006 General Elections. Many states require a Federal or national certification as a condition of state certification. Historically, the three to four month period immediately preceding a General Election produces a number of emergent situations that require the prompt modification of voting systems. These changes are often required by state or local election officials and must be made prior to Election Day. To this end, the pre-election phase of the EAC's Certification Program is designed to meet the immediate needs of election officials from the date NASED terminated its qualification program until after the November General Election. The pre-election requirements of the certification program are narrowly tailored to meet these needs. Additionally, the pre-election phase of the program was drastically limited in

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EAC needed to provide accredited labs on a temporary, interim basis to ensure that the agency had the means to implement its certification program. Additionally, EAC would be compelled to implement a provisional, pre-election certification program to replace services offered by NASED. EAC could not wait for NIST to recommend laboratories. Fortunately, HAVA provided a mechanism for EAC to take such action in Section 231(b)(2)(B). This section requires that EAC publish an explanation when accrediting a laboratory without a NIST recommendation. A notice was published on EAC's Web site to satisfy this requirement.

**EAC's Interim Accreditation Program.** At a public meeting in August 2005 held in Denver, the commissioners received a staff recommendation outlining the details of the interim accreditation program. The staff recommendation included a process in which the three laboratories previously accredited by NASED – CIBER, SysTest Labs, and Wyle Laboratories – would be allowed to apply for interim accreditation. In December of 2005, EAC officially began accepting applications for a limited interim accreditation program. As stated in the letters, the purpose of the interim accreditation program was to provide accredited laboratories to test voting systems to federal standards, until such time as NIST/NVLAP was able to present its first set of recommended laboratories. This accreditation was limited in scope to the 2002 Voluntary Voting System Standards and required the laboratory to apply to the NVLAP program to receive a permanent accreditation. The letters also sought variety of administrative information from the laboratories and required them to sign a Certification of Laboratory Conditions and Practices. This certification required the laboratories to affirm, under penalty of law, information regarding laboratory personnel, conflict of interest policies, recordkeeping, financial stability, technical capabilities, contractors, and material changes.

In order to accredit a laboratory (even on an interim basis), EAC needed to contract with a competent technical expert to serve as a laboratory assessor. EAC sought a qualified assessor with real-world experience in the testing of voting systems. Ultimately, only one individual responded to EAC's solicitation. The individual was (at the time) the only individual known to have the requisite experience and assessor qualifications. The contractor reviewed each of the laboratories that applied. The review was performed in accordance with international standards, the same standards used by NVLAP and other laboratory accreditation bodies. This standard is known as International Standard ISO/IEC 17025, *General Requirements for the Competence of Testing and Calibration Laboratories*. In addition, the EAC assessor (who also currently serves as a NVLAP assessor) applied NIST Handbooks 150, *Procedures and General Requirements* and NIST Handbook 150-22, *Voting System Testing*.

CIBER, SysTest Labs, and Wyle Laboratories applied for accreditation under the interim program. Each, as required, had previously received a NASED accreditation. EAC's

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scope, (1) it did not certify voting systems, just modifications and (2) the certification was provisional and, thus, expired.

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assessor visited each of the labs and conducted a review consistent with the standards noted above. The assessor reviewed laboratory policies, procedures and capabilities to determine if the laboratories could perform the work required. Laboratory assessments do not make conclusions regarding past laboratory work product. Two of the applicant laboratories, SysTest Laboratories, L.L.C., and Wyle Laboratories, Inc. received an interim accreditation. The assessor's reports and EAC action regarding these laboratories are available on the EAC Web site.<sup>2</sup> EAC promptly published on its Web site information regarding its decision on accreditation (August and September of 2006). This notice provides some brief background on the interim accreditation process, starting with the fact that three previously NASED accredited laboratories were invited to apply to the program, including information on the program's requirements and limitations and ending with the identity and contact information of the two laboratories accredited. Information was also electronically forwarded to EAC's list of stakeholders via e-mail. The EAC stakeholders e-mail list includes almost 900 election officials and interest groups, nationwide. Staff members for EAC oversight and appropriations committees are included in this list of stakeholders. In addition to EAC's Web site and e-mail announcements, on September 21, 2006 EAC's Executive Director reiterated the Commission's decision at a public meeting Web cast to the EAC Web site. This announcement identified the interim accredited labs by name. Furthermore, in October 26, 2006, the two interim accredited laboratories testified at a nationally televised public hearing.

**The Interim Accreditation Program and CIBER.** The third laboratory, CIBER, has yet to satisfy the requirements of the interim accreditation program. The initial assessment of CIBER revealed a number of management, procedural and policy deficiencies that required remedial action before the laboratory could be considered for accreditation. These deficiencies are identified in the initial CIBER/Wyle report. They were also brought to the attention of CIBER's President of Federal Solutions in a letter from EAC's Executive Director dated September 15, 2006. The letter outlines, consistent with recommendation of EAC's assessor, the steps the laboratory must take to achieve compliance. The letter requires CIBER to:

- a. *Assign resources, adopt policies and implement systems for developing standardized tests to be used in evaluating the functionality of voting systems and voting system software. Neither ITA Practices, CIBER nor any of its partners will be permitted to rely on test plans suggested by a voting system manufacturer.*
- b. *Assign resources, adopt policies and implement systems for quality review and control of all tests performed on voting systems and the report of results from those tests. This shall include provisions to assure that all*

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<sup>2</sup> Note: The Wyle and CIBER assessment was completed as a joint report. The two labs have a cooperative agreement to work together in test voting systems (Wyle performing hardware testing and CIBER software testing).

*required tests have been performed by ITA Practices, CIBER or its accredited partner lab.*

Finally, the letter required an additional "follow-up" assessment of the laboratory.

The follow-up assessment of CIBER was performed by EAC's assessor in December of 2006. The findings of this assessment were documented in a report, which is available on the EAC Web site. In the findings, the assessor recognized significant changes CIBER had made to its program in response to the initial assessment, including new policies regarding test procedures, management and personnel. The report also noted a number of non-conformities that had yet to be addressed by the laboratory.

In a letter dated January 3, 2007, CIBER provided a written response to EAC's follow-up assessment and report. The response sought to address the deficiencies noted in the December assessment. Additionally, CIBER officials requested to meet with EAC staff to discuss their January 3 response. This meeting took place at EAC on January 10, 2007. At the meeting, EAC staff informed CIBER that their report could not serve as the basis of accreditation because it failed to resolve all outstanding issues. A number of CIBER responses to noted deficiencies were listed as "TBD." EAC's assessor and Certification Program Director formally reviewed CIBER's response. EAC provided CIBER notice of the deficiencies that remain outstanding and informed them of the steps they must take to come into compliance by a letter dated February 1, 2007. Due to the fact that the purpose and usefulness of the interim accreditation program is coming to a close, EAC allowed CIBER 30 days in which to document their full compliance. After this time, the program will be closed and no further assessment actions will be performed under the interim program. CIBER was notified of this procedure by letter dated January 26, 2007, and on February 8, 2007, EAC voted to close its interim laboratory accreditation program effective March 5, 2007.

Information related to CIBER's status in the EAC interim accreditation program was not released prior to January 26, 2007. It was EAC's belief, in consultation with NIST, that it would be improper to release information regarding an incomplete assessment. However, on January 25, 2007, CIBER took the affirmative action of making this information available to a third party, the New York State Board of Elections. With this action, CIBER made the information public and EAC believed it was incumbent to provide this information to the public. As such, on January 26, 2007, EAC posted on its Web site assessment reports, correspondence, and responses from CIBER related to their progress in the EAC interim accreditation program.

Copies of the two reports issued by the EAC assessor concerning CIBER's laboratory accreditation assessments are attached as Appendixes 1 and 2 to this letter.

### **Draft Voter Fraud and Voter Intimidation Report**

The second document requested by Congressman Hinchey was the draft report prepared by Job Serebrov and Tova Wang as contracted employees to the EAC. This document was produced by contract employees of the EAC for the EAC. Thus, this draft report was and is considered predecisional under the deliberative process exemption to the Freedom of Information Act (FOIA).

As you may know, the Deliberative Process Privilege protects intra-agency documents that are (1) pre-decisional 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 or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and contractors ("consultants") constitute intra-agency documents.<sup>3</sup> This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.<sup>4</sup> The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.<sup>5</sup> Ultimately, deliberative 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.<sup>6</sup>

The report requested by Congressman Hinchey is a draft, representing one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by contract employees in order to aid the EAC's Commissioners in their decisions regarding voting fraud and voter intimidation. The contract employees had no personal interest in their submissions and had no agency decision-making authority. Each was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when the report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The determination of this document as predecisional is born out in the facts surrounding the project at issue, including the contract documents that gave rise to research and writing of this draft report. First, the voter fraud and intimidation study that

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<sup>3</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

<sup>4</sup> Klamath, at 10.

<sup>5</sup> Hoover, 611 F.2d at 1138.

<sup>6</sup> NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

was requested is a draft of a final document that has already been released after being vetted by staff and approved by the EAC Commissioners. It is available in its final form on EAC's Web site, [www.eac.gov](http://www.eac.gov). The draft document at issue was created by two contract employees hired pursuant to 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 were 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. As stated by their contracts, 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." Moreover, the contracts clearly forbid the consultants from releasing the draft they created consistent with the privilege covering the draft report. The contract states

All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

Finally, the purpose or subject of the draft report at issue was to make an EAC determination on how voter fraud should be studied by the agency. This was to be done by (1) assessing the nature and quality of the information that presently exists on the subject matter, (2) defining the terms and scope of EAC study as proposed by HAVA, (3) determining what is to be studied and (4) determining how it is to be studied. In addition, the Consultants were asked to develop a definition of the phrases "voting fraud" and "voter intimidation."

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. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voter fraud and intimidation report provided by Ms. Wang and Mr. Serebrov. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and allegations that showed bias. EAC staff edited the draft report to correct the problems mentioned above and included all of the consultants' and working groups' recommendations. The final report was adopted by EAC on December 7, 2007 during its public meeting. The final report as well as all of

the underlying research conducted by Mr. Serebrov and Ms. Wang are available on EAC's Web site, [www.eac.gov](http://www.eac.gov).

EAC understands and appreciates that the a request from a Congressional committee is exempt from the provisions of FOIA, and as such, EAC is providing this draft document despite the fact that the deliberative process exemption clearly applies to its contents. The draft report has been attached as Appendix 3 to this letter.

**Draft Voter Identification Report**

The third document requested is the draft report prepared by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. This draft report, like the draft voter fraud and voter intimidation report, is predecisional under the deliberative process exemption to FOIA.

With regard to the Voter Identification draft report, it was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voting identification procedures." The stated objective of the contract was 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... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action. EAC has not completed review and vetting of this document. However, initial review of this document reveals data and analysis that causes EAC concern. 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 turn out. 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>7</sup> After this review process is completed, EAC will make a decision whether to adopt or reject the draft report.

Again, recognizing that a request from a Congressional committee is exempt from the provisions of FOIA, EAC is providing this draft document despite the fact that the deliberative process exemption clearly applies to its contents. The draft report has been attached as Appendix 4 to this letter.

Thank you for your requests and your interest in election administration. If you have further questions, please do not hesitate to contact me.

Sincerely,

Donetta Davidson  
Chair

cc: Congressman Maurice Hinchey (letter only)

---

<sup>7</sup> See EAC Public Testimony, February 8, 2007, page 109.

027071



**Deliberative Process  
Privilege**

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

bcc

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report. This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way. I will discuss this further with each of you between now and tomorrow. I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

027072

**Deliberative Process  
Privilege**

**Attorney-Client  
Privilege**

Thomas R. Wilkey/EAC/GOV  
04/20/2007 12:13 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Re: Fraud Report

I discussed this with Julie last evening and again this morning and agree with her comments. I believe both the IG review and our responses to Senator Finesteins letter covers a great deal of what we were asking them to do.

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/20/2007 12:14 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey; Margaret Sims; Jeannie Layson  
**Cc:** Gavin Gilmour  
**Subject:** Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

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 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth

027073

overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

027074

Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV      To: Juliet E. Hodgkins/EAC/GOV  
04/20/2007 08:21 AM      cc  
bcc  
Subject: Re: Fw: Fraud Report

Sure thing... not sure I fully understand the ultimate goal concerning the document.

GG

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.

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM      To: Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject: Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report. This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way. I will discuss this further with each of you between now and tomorrow. I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

27075

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

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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 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV

04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report. This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners. Jeannie has offered to help you in any way. I will discuss this further with each of you between now and tomorrow. I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

027076

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 08:17 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Fraud Report

My understanding is that Jeannie requested that Peggy provide a complete recitation of what happened and then Gracia said that I should do the same.

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour  
**Sent:** 04/20/2007 08:21 AM EDT  
**To:** Juliet Hodgkins  
**Subject:** Re: Fw: Fraud Report

Sure thing... not sure I fully understand the ultimate goal concerning the document.

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

027077

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Thanks

Tom

-----  
Sent from my BlackBerry Wireless Handheld

027078

Attorney-Client  
Privilege

Thomas R. Wilkey/EAC/GOV  
04/20/2007 12:13 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Re: Fraud Report

I discussed this with Julie last evening and again this morning and agree with her comments. I believe both the IG review and our responses to Senator Finesteins letter covers a great deal of what we were asking them to do.

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/20/2007 12:14 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey; Margaret Sims; Jeannie Layson  
**Cc:** Gavin Gilmour  
**Subject:** Fw: Fraud Report

Commissioners & Tom,

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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 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV

04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth

027079



overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks

Tom

---

Sent from my BlackBerry Wireless Handheld

027080

Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV  
04/20/2007 08:21 AM

To Juliet E. Hodgkins/EAC/GOV  
cc  
bcc  
Subject Re: Fw: Fraud Report

History This message has been replied to.

Sure thing... not sure I fully understand the ultimate goal concerning the document.

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report.

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I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks  
Tom

027081

Sent from my BlackBerry Wireless Handheld

Attorney-Client  
Privilege

Thomas R. Wilkey/EAC/GOV  
04/19/2007 07:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fraud Report

Ok

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/19/2007 07:53 PM EDT  
**To:** Thomas Wilkey  
**Subject:** Re: Fraud Report

I understand. However, this is less of a request and more of a demand. Sorry, but we need to talk about a few things before tomorrow.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 07:51 PM EDT  
**To:** Juliet Hodgkins  
**Subject:** Re: Fraud Report

Ok if I can still talk..mi had to put hope with these three for the entire day

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/19/2007 07:50 PM EDT  
**To:** Thomas Wilkey  
**Subject:** Re: Fraud Report

Please call me at home after your dinner. 703-765-2047

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth overview of the work you did on this report. This would include all of the details of your work on the both the draft report and the final report adopted

027083

by the Commissioners, Jeannie has offered to help you in any way.  
I will discuss this further with each of you between now and tomorrow.  
I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks  
Tom


---

Sent from my BlackBerry Wireless Handheld

027084

Attorney-Client  
Privilege

Juliet E.  
Thompson/EAC/GOV  
11/02/2005 04:26 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Question 

Perhaps they could simply submit a supporting statement with the number of hours that they worked.

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

Gavin S. Gilmour/EAC/GOV  
11/02/2005 01:14 PM

To Juliet E. Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc  
Subject Fw: Question

Julie,

FYI (see below)

I am thinking that Job and Tova will have to resubmit their invoice (maybe we should call them time sheets) and include a summary of their hours worked.

Your thoughts.


GG


Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Gavin S. Gilmour/EAC/GOV on 11/02/2005 01:12 PM —



"Job Serebrov"

  
11/02/2005 01:07 PM

To ggilmour@eac.gov  
cc   
Subject Re: Question

Gavin:

027085

When do you think everything will be finalized and did you find out how long it will take to get paid for the Oct 25 invoice?

By the way, I think you and Julie gave me your colds.

Job

--- ggilmour@eac.gov wrote:

> Job,  
>  
> Per GSA Finance, the Federal Government does not  
> have tax liability on  
> Personal Services Contracts. You will be issued a  
> 1099 and be responsible  
> for paying the required taxes.  
>  
>  
> Gavin S. Gilmour  
> Associate General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

027086

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 12:14 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Fw: Fraud Report

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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 04/20/2007 11:54 AM —

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

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Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

027087



Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
04/20/2007 07:50 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Fraud Report

I would like to talk to you about this request when I get in. I am particularly interested in your thoughts on how this impacts atty-client privilege.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 04/19/2007 05:03 PM EDT  
**To:** Juliet Hodgkins; Margaret Sims  
**Cc:** Jeannie Layson  
**Subject:** Fraud Report

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Thanks  
Tom

-----  
Sent from my BlackBerry Wireless Handheld

027088



"Job Serebrov"

11/02/2005 02:07 PM

To ggilmour@eac.gov

cc [REDACTED]

bcc

Subject Re: Question

History: This message has been forwarded.

Gavin:

When do you think everything will be finalized and did you find out how long it will take to get paid for the Oct 25 invoice?

By the way, I think you and Julie gave me your colds.

Job

--- ggilmour@eac.gov wrote:

> Job,  
>  
> Per GSA Finance, the Federal Government does not  
> have tax liability on  
> Personal Services Contracts. You will be issued a  
> 1099 and be responsible  
> for paying the required taxes.  
>  
>  
> Gavin S. Gilmour  
> Associate General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

027089

Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV  
11/02/2005 01:52 PM

To Serebrov@sbcglobal.net  
cc  
bcc  
Subject Question


Job,

Per GSA Finance, the Federal Government does not have tax liability on Personal Services Contracts. You will be issued a 1099 and be responsible for paying the required taxes.

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

027090

Gavin S. Gilmour/EAC/GOV  
11/17/2006 04:51 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft Voting Fraud and Voter Intimidation Report 

Looks good...

I have some comments... (hand written) we can discuss upon your return..

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 01:40 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Colver/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC  
Subject Draft Voting Fraud and Voter Intimidation Report

Commissioners and Tom,

I have attached a draft version of the EAC Voting Fraud and Voter Intimidation report. **Please have your comments ready no later than Tuesday , Nov. 28, COB, so that I will be prepared to discuss them at our briefing on Wednesday , Nov. 29 at 10:30.**

You will note that there are appendixes referenced in the report. These documents are quite lengthy. Thus, I did not attach them to this email. If, however, you want to read the documents, DeAnna has access to them in my absence and can either email them to you or print them for you.

I think that the report is fairly self-explanatory. However, there are two questions that we need to address and that the Commissioners need to comment on:

1. The consultants provided summaries of articles, books, and reports that they read, as well as summaries of the interviews that they conducted. Peggy created two tables summarizing the consultants' summaries of books, article and reports as well as interviews. We need to make a determination of which summaries we want to attach as appendixes. The only issue that I am aware of (and I have a question pending to Peggy about the quality of these summaries) is a significant disagreement over the summaries

027091

of interviews with Craig Donsanto and John Tanner of the Dept. of Justice. They disagree with the characterization given by the consultants to what they said in the interview. Obviously, this matter would have to be resolved if we decide to use the consultants' summaries.

2. Tom and I had a conversation with Tova and Job about the fact that we are going to issue a report. Tova was quite insistent about being able to see the report before it is released. I am NOT inclined to give her a copy of the report before it is released. Neither Tova nor Job are still on contract with the EAC. Thus, they are just like any other member of the public. I believe that if we release it to them, then we may have a significant problem withholding the document from others that may ask for it via FOIA request. I believe that the course of action should be to release it to all persons simultaneously.

Happy reading and Happy Thanksgiving!



Voter Fraud & Intimidation Report.doc

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

027092

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

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Bryan Whitener/EAC/GOV  
04/30/2007 06:03 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola  
Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC,  
Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-30-07, Mon )

Commissioners,

(1) Leslie Clark of the Miami Herald plans to attend tomorrow's public meeting. Today she asked whether Florida is required to abide by EAC reply to their request. We said that EAC is the cognizant agency for most of the HAVA funding programs. We said that EAC therefore has the responsibility to advise and instruct states regarding the appropriate use of these funds consistent with the provisions of HAVA as well as circulars developed by OMB Circulars A-87 which governs the use of federal funds to purchase goods for state and local governments.

(2) Dana Burke, News Editor for the Citizen in Webster, TX is working on a story regarding voter identification requirements in Texas. She said Democrats opposed to the new legislation have referred to EAC's voter ID study and point to a correlation between more stringent voter id requirements and lower voter turnout, especially among minority groups. She noticed EAC's statement regarding a request for review, asked if the study is considered valid and whether the assessment by opponents of the legislation is correct. We sent her the following two links and replied that our Inspector General is currently reviewing the circumstances surrounding this research and that when that process is complete we'll be glad to discuss it further.

04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects

News Release: 3/30/07 - EAC to Launch Comprehensive Study of Voter ID Laws

###

027094

Caroline C. Hunter/EAC/GOV  
04/11/2007 09:41 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Rosemary E. Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, "Wolson, Stephanie" <[REDACTED]>, "Fabre, Stacie" <[REDACTED]>  
bcc [REDACTED]

Subject Re: Draft letter to board of advisors and standards board [REDACTED]

History: [REDACTED] This message has been forwarded [REDACTED]

Thank you, Julie for turning this around so quickly. I believe this is the 1st communication with the boards on research issues. I think we need to discuss research in general, then explain what has happened in the past few weeks with the voter id and fraud studies. Don't we need to explain what has happened - Cong released, NYT, etc. Also, I believe the Advisory Bd provided comment and or action on one or both of the studies and I think that should be noted. Finally, do we think the graph with the pledge to provide accurate research would preclude our releasing the Eagleton report the way we did?

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/11/2007 05:00 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson, Stephanie" <[REDACTED]>; Thomas Wilkey; Gavin Gilmour; Jeannie Layson  
**Subject:** Draft letter to board of advisors and standards board

Commissioners,

Attached is a draft letter to the Standards Board and Board of Advisors. This draft follows our discussions earlier today. Please let me know if you have comments, edits or suggestions. I believe that the goal is to get this letter out tomorrow morning.

[attachment "draft letter to boards.doc" deleted by Caroline C. Hunter/EAC/GOV]

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

027095



Rosemary E.  
Rodriguez/EAC/GOV  
04/12/2007 08:28 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, "Stephanie Wolson"  
[REDACTED] "Fabre, Stacie"  
bcc

Subject Re: Draft letter to board of advisors and standards board

History: This message has been forwarded

Pls see the front page of today's NYTimes--scant evidence of voter fraud

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/12/2007 07:31 AM EDT  
**To:** Caroline Hunter; Gracia Hillman; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Stephanie Wolson"  
[REDACTED]; "Fabre, Stacie" <[REDACTED]>; Thomas  
Wilkey; Gavin Gilmour; Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

From the variety of comments it is not clear to me that there is a common understanding on how to proceed and what we should say -- or at least I am not comfortable that I understand how you all want this letter to read. So, I would suggest we spend a bit more time on the theme this morning so that I can efficiently and accurately edit the letter so that we can get it out timely today.

-----

Sent from my BlackBerry Wireless Handheld

Caroline C. Hunter

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

**From:** Caroline C. Hunter  
**Sent:** 04/12/2007 07:27 AM EDT  
**To:** Gracia Hillman; Juliet Hodgkins; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson" <stephanie.wolson@gmail.com>;  
"Fabre, Stacie" <fms.eacfabre@yahoo.com>; Thomas Wilkey; Gavin Gilmour;  
Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

Keeping it narrow to the current controversy is ok with me, but I think we cannot assume people know how the recent events unfolded, ie Cong released, NYT wrote, etc.

Gracia Hillman

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

**From:** Gracia Hillman  
**Sent:** 04/12/2007 07:22 AM EDT  
**To:** Caroline Hunter; Juliet Hodgkins; Donetta Davidson; Rosemary Rodriguez  
**Cc:** Sheila Banks; Elieen Kuala; "Wolson" <[REDACTED]>;  
"Fabre, Stacie" <[REDACTED]>; Thomas Wilkey; Gavin Gilmour;  
Jeannie Layson  
**Subject:** Re: Draft letter to board of advisors and standards board

It appears there will be a substantive rewrite so I will save my edits for that version.

However, my original suggestion was to communicate with the boards about the current controversy, not just research in general. Otherwise it looks like we are sidestepping the problem at hand, which is why we

027096

are writing to the boards in the first place.

-----  
Sent from my BlackBerry Wireless Handheld

Bryan Whitener/EAC/GOV  
03/29/2007 05:07 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 3-29-07, Thurs )

Commissioners:

Today we had the following media inquiries:

(1) Pam Fessler of NPR wanted to know what Congressman Hinchey requested, and whether we complied. We told her we sent everything he requested to the House Appropriations Committee, Subcommittee on Financial Services and General Government. We explained that most of what they requested was available on our website. Regarding the voter ID research project, we said that 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. We then explained the chronology regarding the voter fraud and intimidation, and pointed out that the final report includes all of the recommendations put forth by the consultants as well the research they provided.

(2) John Gideon of Voters Unite wanted to know why we haven't investigated the equipment used in the FL-13 CD race. We explained that EAC's voting system certification program was implemented in January of this year. Until that time, voting systems were evaluated by NASED, which is not a federal agency. We went on to explain as follows - When the Commission adopted its certification program, it decided not to grandfather or transfer any voting systems that had been qualified by NASED. The Commission felt it was important to conduct its own evaluation of voting systems that had been qualified by NASED. That's why any NASED-qualified voting system, including the one he referenced, that wants an EAC certification must be submitted for end-to-end testing. The system he referenced has not been through EAC's certification program. If and when it does, it will be our responsibility to make sure the manufacturer adheres to the terms of our program. Also, when a system comes to us for certification, relevant substantiated reports or reviews of the voting system may be taken into account. And if an instance such as this were to arise regarding an EAC-certified system, we would certainly investigate. In addition, we will make public the systems that have received EAC certification upon completion of the appropriate review process, as well as those manufacturers that have registered with EAC and those voting systems that have been submitted for certification, and we sent him to our website for a list of the information we will post.

###

027098

Juliet E. Hodgkins/EAC/GOV  
02/27/2007 04:54 PM

To "Davidson, Donetta" <ddavidson@eac.gov>,  
jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
cc Elieen L. Kuala/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC  
bcc

Subject Questions for hearing

History: This message has been forwarded.

All--

I received a call from the minority staff of the appropriations subcommittee. I was informed that they are thinking of asking the following questions:

1. Have states spent the \$3.1 billion that we distributed under HAVA and what are we doing to monitor their spending of Federal funds?
2. Quoting from the Cal-Tech/MIT study, it appears that HAVA is improving voting and turn out, do we agree?
3. Does greater state involvement in elections equate to better election management?
4. How prevalent is voter fraud?
5. Has there ever been a documented incident of voting system tampering during an election?
6. Describe how the implementation of HAVA mandates increases voting security.
7. Will states participate in the voluntary voting system testing and certification program?
8. If the College Poll Worker program is funded, how will we determine which schools get the money?
9. Do paper trails (VVPATs) improve the security of voting systems?

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

027099

Margaret Sims/EAC/GOV  
05/22/2006 05:01 PM

To ecortes@eac.gov, dromig@eac.gov, Elieen L.  
Collver/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC,  
lotero@██████████

cc

bcc

Subject Voting Fraud-Voter Intimidation Working Group Meeting


History: This message has been forwarded.

If any of you took notes of the discussion during the Voting Fraud-Voter Intimidation Working Group meeting, would you please provide a copy to Devon. Devon, would you please use the meeting agenda to organize and consolidate any notes by topic, and send the consolidated notes to me? Thanks. --- Peggy

027100

Caroline C. Hunter/EAC/GOV  
04/11/2007 09:41 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Rosemary E. Sheila A. Banks/EAC/GOV@EAC, Eileen L. Kuala/EAC/GOV@EAC, "Wolson, Stephanie" <[REDACTED]>, "Fabre, Stacie"  
bcc

Subject Re: Draft letter to board of advisors and standards board 

Thank you, Julie for turning this around so quickly. I believe this is the 1st communication with the boards on research issues. I think we need to discuss research in general, then explain what has happened in the past few weeks with the voter id and fraud studies. Don't we need to explain what has happened - Cong released, NYT, etc. Also, I believe the Advisory Bd provided comment and or action on one or both of the studies and I think that should be noted. Finally, do we think the graph with the pledge to provide accurate research would preclude our releasing the Eagleton report the way we did?

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 04/11/2007 05:00 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez  
**Cc:** Sheila Banks; Eileen Kuala; "Wolson, Stephanie" <[REDACTED]>; "Fabre, Stacie" <[REDACTED]>; Thomas Wilkey; Gavin Gilmour; Jeannie Layson  
**Subject:** Draft letter to board of advisors and standards board

Commissioners,

Attached is a draft letter to the Standards Board and Board of Advisors. This draft follows our discussions earlier today. Please let me know if you have comments, edits or suggestions. I believe that the goal is to get this letter out tomorrow morning.

[attachment "draft letter to boards.doc" deleted by Caroline C. Hunter/EAC/GOV]

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

027101



Gracia Hillman/EAC/GOV

03/30/2007 06:26 PM

To Jeannie Layson/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject Re: Voter ID update 

Too early yet.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson

**Sent:** 03/30/2007 04:19 PM EDT

**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman

**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins

**Subject:** Voter ID update

Commissioners,  
Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

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)

027102

Gavin S. Gilmour/EAC/GOV  
04/17/2007 05:27 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. cc Sheila A. Banks/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV, Karen bcc

Subject FYI--Letter from Serrano

All,

Today we received a faxed copy of a letter signed by Jose Serrano as Chair of the Financial Services and General Government Appropriations Subcommittee. The Chairman urges the EAC to publicly release the full draft version of the Provisional Voting report prepared by Eagleton. The letter states that the Congressman was pleased with our decision to engage our Inspector General and to release the draft version of the Voter ID study (though he was disappointed that we did not adopt it).

Chairman stated in his letter that if we do not decide to release the draft report, he would like an update regarding the study's status, time line for release and a statement regarding why the EAC would deviate from the "precedent" it has now set in releasing draft studies.

It is my understanding that this report was made public at the Board of Advisor and Standards Board meetings in May 2006. I do not know if any changes were made to the document after that time. Perhaps Karen can provide additional information regarding this concern. It is also my understanding that this document has been released to third parties upon request under FOIA. Additionally, I believe a best practices document was created by the EAC based on the research. That document is on our website. Also, Stephanie informed me (and Karen confirmed) that the study is posted on Eagleton's website.

A copy of Serrano's letter is attached.

GG



Serrano Letter.pdf

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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027103



DAVID R. OBEY, WISCONSIN, CHAIRMAN  
 JOHN P. MURTHA, PENNSYLVANIA  
 NORMAN D. DICKS, WASHINGTON  
 ALAN B. MOLLICHAN, WEST VIRGINIA  
 MARCY KAPTLIN, OHIO  
 PETER J. VIGLORRY, INDIANA  
 NITA M. LOWEY, NEW YORK  
 JOSE E. SERRANO, NEW YORK  
 ROSA L. DELAURIO, CONNECTICUT  
 JAMES P. MORAN, VIRGINIA  
 JOHN W. OLVER, MASSACHUSETTS  
 ED PASTOR, ARIZONA  
 DAVID E. FRICE, NORTH CAROLINA  
 CHEY EDWARDS, TEXAS  
 ROBERT E. "BOB" CRAMER, JR., ALABAMA  
 PATRICK J. KENNEDY, RHODE ISLAND  
 MAURICE D. HINCHAY, NEW YORK  
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 BETTY MCCOLLUM, MINNESOTA  
 STEVE KIVAHL, NEW YORK  
 TIM RYAN, OHIO  
 C.A. "DUTCH" RUPPERBERGER, MARYLAND  
 BEN CHANDLER, KENTUCKY  
 DEBBIE WASSERMAN SCHULTZ, FLORIDA  
 CINO RODRIGUEZ, TEXAS

**Congress of the United States**  
**House of Representatives**  
**Committee on Appropriations**  
**Washington, DC 20515-6015**

April 17, 2007

JERRY LEWIS, CALIFORNIA  
 C. W. BILL YOUNG, FLORIDA  
 RALPH REGULA, OHIO  
 HAROLD ROGERS, KENTUCKY  
 FRANK R. WOLF, VIRGINIA  
 JAMES T. WALSH, NEW YORK  
 DAVID L. HOBBEL, OHIO  
 JOE KYROLLENBERG, MICHIGAN  
 JACK KINGSTON, GEORGIA  
 RODNEY P. FREILINGHYBEN, NEW JERSEY  
 ROGER F. WADKER, MISSISSIPPI  
 TODD TAHRIT, KANSAS  
 ZACH WAMP, TENNESSEE  
 TOM LATHAM, IOWA  
 ROBERT B. ADERHOLT, ALABAMA  
 JO ANN EMERSON, MISSOURI  
 KAY STRANGER, TEXAS  
 JOHN E. PETERSON, PENNSYLVANIA  
 VIRGIL H. GOODE, JR., VIRGINIA  
 JOHN T. BOGOTTLE, CALIFORNIA  
 RAY LANOOD, ILLINOIS  
 DAVE WELDON, FLORIDA  
 MICHAEL K. SIMPSON, IDAHO  
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 MARK STEVEN KIRK, ILLINOIS  
 ANDER CRUMBRAW, FLORIDA  
 DENNIS R. REMBERG, MONTANA  
 JOHN R. CANTER, TEXAS  
 RODNEY ALEXANDER, LOUISIANA

CLERK AND STAFF DIRECTOR  
 ROB NABORS  
 TELEPHONE:  
 (202) 225-4771

The Honorable Donetta Davidson  
 Chair  
 United States Election Assistance Commission  
 1225 New York Avenue Northwest, Suite 1100  
 Washington, DC 20005

Dear Chairwoman Davidson:

I am writing to urge the Election Assistance Commission to publicly release the full draft version of its commissioned report on provisional voting. Given the concern by members of this subcommittee, as well as other members of Congress, over the issue of transparency at the EAC, I believe that it is in the best interest of the taxpayers that they be able to see the full draft report on this topic.

As you know, the EAC commissioned a report from the Eagleton Institute of Politics at Rutgers on both voter identification and provisional voting. At some point, these two reports were split from one another. On March 30, 2007, the EAC released the draft report on voter identification, entitled "Best Practices to Improve Voter Identification Requirements."

I was pleased with the positive precedent set by the EAC with the release of the draft report on voter identification. Although I was disappointed that the Commission did not endorse the results of the study, I strongly believe that releasing the full draft helped dispel concerns of transparency and partisanship, and allowed the public at large to help identify areas that need more in depth review. I also believe that you have made the right decision in asking the Inspector General to conduct a review of the Commission's contracting procedures with respect to recent reports. I am hopeful that the review will conclude that greater openness and transparency is of utmost importance.

Given your request to the Inspector General and the recent controversies over the release of the draft voter identification report, as well as the draft voter fraud and intimidation report, it would

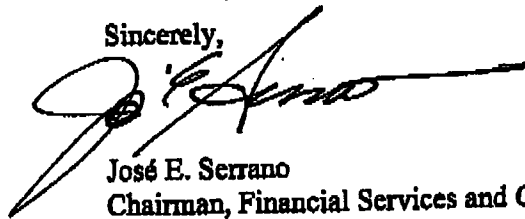
Page 2  
April 17, 2007

be in the best interest of the Commission to release the draft report on provisional voting. Releasing the full draft version of this report would help to ensure that the EAC remains a transparent organization and dispel concerns that the Commission has been acting in a partisan manner.

Should the Commission decide not to release the draft report, I would then request an update as to the status of this report, a timeline for its release, as well as any compelling reasons as to why the EAC should deviate from the precedent you have now set. The public deserves the opportunity to decide whether the report is both rigorous and accurate.


As I mentioned in the hearing we held just over a month ago, I strongly believe that the EAC will be one of the most important government entities in the run up to the 2008 elections. It is of vital importance that we ensure that the EAC remains, in appearance and in fact, a bipartisan, independent agency- so that voters and election administrators across the country can trust its efforts to ensure that federal elections are safe, secure, accurate, and fair. Releasing the provisional voting report would go a long way towards that goal, and I look forward to your response.

Sincerely,



José E. Serrano  
Chairman, Financial Services and General  
Government Appropriations Subcommittee

Rosemary E.  
Rodriguez/EAC/GOV  
04/17/2007 05:31 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Sheila A. Banks/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
bcc  
Subject Re: FYI--Letter from Serrano 

Dear all,

I wonder how many more requests like this are waiting in the wings? Is there any way we can anticipate these requests? How many reports are completed and outstanding? May I request a briefing?

Thanks.

RER

Gavin S. Gilmour

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

**From:** Gavin S. Gilmour  
**Sent:** 04/17/2007 05:27 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey  
**Cc:** Sheila Banks; Juliet Hodgkins; Elieen Kuala; Jeannie Layson; Karen  
Lynn-Dyson; fms.eacfabre@yahoo.com  
**Subject:** FYI--Letter from Serrano

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A copy of Serrano's letter is attached.

GG

[attachment "Serrano Letter.pdf" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel

027106

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.

027107

Caroline C. Hunter/EAC/GOV  
04/17/2007 06:44 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Rosemary E. Sheila A. Banks/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
bcc

Subject Re: FYI-Letter from Serrano

If we release every single thing that comes in the door every contractor will have a platform to shop their "research" as they see fit at taxpayers expense. Further, I see no need for a Commission, there would only be a need for a research director to dole out government contracts. I am amazed that a "respected" academic institution would behave in this manner.

Gavin S. Gilmour

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

**From:** Gavin S. Gilmour  
**Sent:** 04/17/2007 05:27 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez; Thomas Wilkey  
**Cc:** Sheila Banks; Juliet Hodgkins; Elieen Kuala; Jeannie Layson; Karen Lynn-Dyson; fms.eacfabre@yahoo.com  
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[attachment "Serrano Letter.pdf" deleted by Caroline C. Hunter/EAC/GOV]

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

027108

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027109

Jeannie Layson/EAC/GOV  
04/17/2007 05:45 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, "Staci Fabre"  
bcc

Subject Re: FYI--Letter from Serrano 

History:  This message has been replied to.

Commissioner,  
The communications audit identified many of the outstanding issues. I have pasted the vulnerabilities section into the attached document.




Comm. audit vulnerabilities.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  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
04/17/2007 05:31 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Juliet E.  
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Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
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From: Gavin S. Gilmour  
Sent: 04/17/2007 05:27 PM EDT  
To: Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;

027110

Thomas Wilkey

Cc: Sheila Banks; Juliet Hodgkins; Elieen Kuala; Jeannie Layson; Karen Lynn-Dyson; [REDACTED]  
Subject: FYI--Letter from Serrano

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[attachment "Serrano Letter.pdf" deleted by Rosemary E. Rodriguez/EAC/GOV]

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United States Election Assistance Commission  
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027111



Jeannie Layson/EAC/GOV  
04/17/2007 06:33 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: FYI--Letter from Serrano

Transcription.

-----  
Sent from my BlackBerry Wireless Handheld  
Donetta L. Davidson  
----- Original Message -----

**From:** Donetta L. Davidson  
**Sent:** 04/17/2007 06:22 PM EDT  
**To:** Jeannie Layson  
**Subject:** Re: FYI--Letter from Serrano

Jennie do we put the transcription of public meetings on the EAC web or just the minutes

-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 04/17/2007 05:45 PM EDT  
**To:** Rosemary Rodriguez  
**Cc:** Caroline Hunter; Donetta Davidson; Elieen Kuala; "Staci Fabre"  
[REDACTED]; Gavin Gilmour; Gracia Hillman; Juliet Hodgkins;  
Karen Lynn-Dyson; Sheila Banks; Thomas Wilkey  
**Subject:** Re: FYI--Letter from Serrano

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[attachment "Comm. audit vulnerabilities.doc" deleted by Donetta L. Davidson/EAC/GOV]

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
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Washington, DC 20005  
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www.eac.gov  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
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04/17/2007 05:31 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Donetta L.  
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cc Sheila A. Banks/EAC/GOV@EAC, Juliet E.  
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Kuala/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,

027112

Karen Lynn-Dyson/EAC/GOV@EAC, "Staci Fabre"

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A copy of Serrano's letter is attached.

GG

[attachment "Serrano Letter.pdf" deleted by Rosemary E. Rodriguez/EAC/GOV]

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005

027113

(202) 566-3100

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027114

**Vulnerabilities**

➤ **Provisional Voting & Voter ID**

- There is media interest in this report but internal EAC officials express concern over the potential for a perceived lack of data or “meat” in the report, which is likely to invite criticism.
- Important Dates:
  - Final reports in EAC staff review
  - Commissioner statement that this report would be out on March 8, 2007

➤ **Cost of Studies**

- EAC needs to be prepared to answer questions about the cost of two studies.
  - Voter Fraud and Intimidation - \$100,000
    - Report is completed, next steps under review at EAC
  - Effective Design for Election Administration - \$681,400
    - Final report due from contractor March 30, 2007

➤ **HAVA Funds State Reports**

- In its first review of the state reports EAC discovered widespread mistakes. Corrections requests were mailed in December and EAC is currently reviewing resubmitted reports.
- Deadline for reports covering last year:
  - Title I – End of February 2007
  - Title II – End of March 2007
- State funds reports have not been made readily available, they have only been given out through FOIA requests.
  - Moving forward EAC should consider making the reports available on the EAC website.

➤ **Report to Congress on State Spending**

- Report will cover what the states have spent, and what they have done with the money, over the past three years.
- Important Date:
  - Due to Congress end of April 2007

➤ **State Audits**

- States are audited under three types of audits – the Single Audit, the Regular Audit and the Special Audit.
- Currently the Inspector Generals Office puts all audits on the EAC website, and EAC is working to make audit resolution documents function as stand alone documents.
  - Doing so is important and could be especially helpful for media and stakeholder outreach providing a clear and concise “here’s the problem, these issues were identified, these resolutions were issued.”

➤ **Title I. Section 102 Payments**

- States had to send certification documents to EAC to prove spending, and upon review of certifications some states were required to pay money back. EAC needs to be prepared for two possible challenges:
  - Certifications
    - Certifications are scheduled to be issued by the end of May, and states can appeal EAC decisions.
    - To meet its goal of processing appeals by end of the summer, EAC must stick to submission deadlines and its own internal deadlines.
    - Decisions will be posted online after they are sent to the states and EAC needs to be prepared to conduct state official outreach.
  - There are currently three states that EAC must prepare for in terms of possible negative media coverage.
    - Arizona - EAC may face more dialogue with AZ due to its disagreement over a proof of citizenship requirement when registering to vote. Arizona does not realize yet that they will have to repay Title I funds – approximately \$250,000 due to GSA miscalculating their precinct numbers. EAC was not aware until they filed their certification documents. This situation will require significant commissioner outreach.
    - New York - Did not meet deadline for spending and will have to repay all of their funds – approximately \$50 million. The state has not been cooperative in the past; DOJ has sued them over HAVA compliance. EAC foresees problem getting the funding back which may lead to media/stakeholder scrutiny.
    - \$53 million coming back to EAC - EAC believes that Congress did not anticipate such a large amount; 1/3 of states that received the funds have amounts to pay back. May face media/stakeholder scrutiny over program functionality.
- **Title I. Section 102 Funds Redistribution to Title II**
- EAC will tell states, based on a formula, how much funding they will be receiving from the redistribution of Section 102 funds, and states will have to revise their state plans to account for the new funding.
  - Once EAC has total funds from states needing to repay, it will take approximately 4 months to redistribute those funds under Title II.
  - As the process could prove lengthy and complicated, EAC needs to be prepared for media and stakeholder outreach.
- **National Voter Registration Act**
- EAC is required to issue regulations about registration form design but has not as of this time. Issuing regulations on registration forms is a lengthy process, so EAC needs to start immediately to address the issue before the beginning of the Presidential primaries.
  - NVRA says that EAC has to develop a form and submit to Congress every two years a report assessing the impact of the Act. EAC did a report in '05 and will be issuing another report this year but has not addressed form changes.

- Form redesign has the potential to have a huge impact on the process. FEC held regional hearings when a new form was developed, and EAC would most likely need to do the same.
  - Delay could produce several negative outcomes if not addressed quickly:
    - Media coverage – Why has this taken so long? Why now?
    - Changes right before the primaries could produce controversy
- **Labs and Systems Certification**
- To leverage labs certification EAC should institute a notification and preparation policy with Burson-Marsteller for the 30-day accreditation window once EAC receives info from NIST.
  - EAC has the opportunity through CYSTECH labs in Denver to conduct proactive media outreach.
    - The test lab has agreed to open itself to media - a good opportunity to create some “sunshine” on the testing process.
  - EAC needs to prevent late system accreditation problems and possible blame in the public eye and with stakeholder groups. To do so, the following issues need to be addressed/actions need to be taken:
    - System accreditation takes approximately 6-8 months. EAC must set a hard deadline of June 2007 to avoid last minute system certification issues.
    - Engage the media
      - Work with the vendor community to conduct media outreach to counter the negative news cycle and leverage those vendors that have positive stories to tell and are open to press outreach.
      - Show what and how EAC is doing its testing. Use program examples such as FCC cell phone emissions testing and FAA airplanes testing.
      - Engage the blogger community
    - Engage the Secretaries of State
      - EAC needs to be particularly cognizant of the California Secretary of State who appears to be anti-voting system change; may want to focus on California-specific outreach program.
      - EAC should leverage possible positive stories/third party-spokespeople through the states of: Washington – Sam Reid; Texas – Ann McGeehan, Director of Elections; Maryland – Linda Lamone, Elections Office.
    - Leverage Cost-to-Test public education meeting with elections officials, NIST, manufacturers, legislators and advocacy groups.
      - Meeting TBD late April/early May
    - Leverage semi-annual vendor community/test lab meetings to focus outreach to Secretaries of State, election directors associations and election centers.
      - TBD Summer

➤ **Testing and Certification - National Association of State Elections Directors**

- Prior to EAC, the National Association of State Elections Directors handled the testing of voting machines. EAC has some of the testing results but does not currently have a thorough inventory of what documents they have, where the documents are located and what exactly the testing results say.
- These testing results, and a lack of information internally, is a serious vulnerability and it is imperative that an accurate inventory and a thorough analysis of the reports be completed as soon as possible.

➤ **Systems and Labs Transparency Issues**

- EAC not releasing source codes can be problematic for the agency.
  - EAC should develop a clear and concise public statement on source codes to be used for media questions and stakeholder questions.
- Lab accreditation conflict of interest questions have been raised. EAC needs to address this question with outreach to media and stakeholders, specifically on legislation introduced in the House.
  - HR 811 – U.S. Rep. Rush Holt
  - Possible Senate companion bill to be introduced by Feinstein or Nelson

Jeannie Layson/EAC/GOV  
04/19/2007 10:11 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline  
C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
bcc

Subject Rep. Serrano

He is quoted in this article as saying the situation surrounding our fraud report could be another Watergate, and wonders if we got our marching orders from the WH. I think we should respond directly to Rep. Serrano regarding his allegation. Say what you will about the way this has been handled, but one thing I'm sure of is that the WH did not edit or was in any way involved in this project. I suggest someone picking up the phone and calling him or his CoS. This is a serious allegation that is starting to really catch on, but now we have a member of Congress saying it.

## The Fraudulence of Voter Fraud

The Bush administration purged U.S. attorneys for failing to prosecute crimes that didn't occur

By Joel Bleifuss

April 18, 2007

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

027119



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**

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 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.

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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 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."

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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."

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Rove should know. He helped grow the problem.

Jeannie Layson  
U.S. Election Assistance Commission  
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Caroline C. Hunter/EAC/GOV  
04/19/2007 11:13 AM

To Jeannie Layson/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Rosemary E. Hillman/EAC/GOV@EAC, Rosemary E.  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
bcc

Subject Re: Rep. Serrano

I think someone should call Serrano but I think we should issue a press release that explains what transpired with the Eagleton and fraud study. We should note that the EAC is an independent federal entity, not part of the Admin and that the WH was not involved in any way in our decision to remove conclusions not supported by the underlying data.

Jeannie Layson

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

**From:** Jeannie Layson  
**Sent:** 04/19/2007 10:11 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez  
**Cc:** Juliet Hodgkins; Margaret Sims; Thomas Wilkey  
**Subject:** Rep. Serrano

He is quoted in this article as saying the situation surrounding our fraud report could be another Watergate, and wonders if we got our marching orders from the WH. I think we should respond directly to Rep. Serrano regarding his allegation. Say what you will about the way this has been handled, but one thing I'm sure of is that the WH did not edit or was in any way involved in this project. I suggest someone picking up the phone and calling him or his CoS. This is a serious allegation that is starting to really catch on, but now we have a member of Congress saying it.

## The Fraudulence of Voter Fraud

The Bush administration purged U.S. attorneys for failing to prosecute crimes that didn't occur

By Joel Bleifuss

April 18, 2007

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

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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**

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.

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Washington, DC 20005  
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Bryan Whitener/EAC/GOV  
04/19/2007 06:19 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-19-07, Thurs )

Commissioners:

Jeannie issued the following media inquiries log for today:

(1) I asked Rick Hasen of Election Law Blog to please post info about our Spanish language glossary of election terms, and he did.

(2) Eliza Carney, National Journal columnist, interviewed the chair today about the recent challenges EAC has encountered. She asked about CIBER, and the chair explained the interim process, the way we modeled our interim process after NVLAP. Eliza wanted to know what EAC was doing to address some of the criticism, and the chair talked about the bipartisan subcommittees and her request to the IG. She said Rep. Hinchey told her the only reason we released the voter ID report was because he asked for it at a hearing. The chair pointed out that in Feb. she asked staff to bring the commission recommendations for wrapping it up w/n 30 days. She asked the chair about the voter fraud report, and the chair said staff reviewed it for accuracy, as we have a responsibility to do. I sent her background info on the history of certification and the voluntary nature of the guidelines and our certification program. She also asked for info about our budgets, and our employee cap, which I sent to her.

(3) David Nather of Congressional Quarterly interviewed the chair about how the agency is standing up against all of the recent criticism. She talked about the bipartisan subcommittees and the IG review request. She said if the IG identifies things that need to be changed, we'll change them. He had emails b/w Peggy and Craig Donsanto about discrepancies with his interview. Peggy talked with the reporter about the issue. She explained that she sat in on the interview, and that she agreed with Craig that they had gotten something wrong -- they stated that DOJ had moved from focusing on fraud conspiracies to individual cases. Peg and Craig agreed that what he'd said was that DOJ used to only focus on conspiracies, now they also focus on individual cases too. Peg said Craig learned of the inaccurate portrayal during his role as the technical advisor to the working group. She said none of the people interviewed were given the opportunity to review the summaries. Craig found out about his through the working group, and Tanner learned about his interview summary after the boards were briefed on the project in May. He asked me if we were finished with the following research projects: -- ballot designs, voter registration methods, recount procedures, misinformation about election times and locations, and proposals to make election day a holiday. I told him all of that research is underway. HAVA-mandated research that's been completed includes Election Crimes (vote fraud), the 2004 Uniformed and Overseas Citizens Absentee Voting Act Survey, and the 2003-2004 National Voter Registration Act Survey. We've also released the 2004 Election Day Survey. And we've issued a series of quick management start guides to election officials throughout the nation, addressing voting system security, introducing a new voting system, ballot preparation, and poll workers. Yesterday, the commission adopted the Spanish language glossary of election terms, the first project released under EAC's Language Accessibility Program, which consists of working groups comprised of local election officials, national advocacy groups and research and public policy organizations to advise the commission on how to best meet language accessibility requirements. Next we will translate the glossary in five Asian languages. We also are working on a Legal Resources Clearinghouse, which will be a web-based database containing statutes, regulations, rules, and fed. and state court decisions related to election administration. It will provide the public and election officials a central location to conduct election administration research. I pointed out to him that we have already met two of the biggest HAVA mandates -- VVSG and the certification program. He asked for the ages of all the commissioners, and I gave it him.

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(4) Philip Burrowes of Congressional Quarterly asked for photos of all commissioners and their length of terms which we provided. He also asked for the names of the members of Congress who made recommendations to the White House regarding appointments. We provided the text of HAVA regarding recommendations and said he would need to ask the White House for names.

(5) Marc Songini of Computer World had the following questions, and my responses follow.

A. Is the EAC doing enough to strengthen voluntary voting system guidelines and voting system certification? EAC, the National Institute of Science and Technology (NIST), and the Technical Guidelines Development Committee (TGDC) have already completed an initial update of the 2002 standards. First, it is important to note that these guidelines are voluntary, and it is up to states whether to adopt them. The 2005 guidelines update and augment the 2002 voting system standards, as required by HAVA, to address advancements in election practices and computer technologies. After December of this year, voting systems will no longer be tested against the 2002 standards. The major changes from 2002 to 2005 fall in the areas of accessibility and usability. The changes made to these sections include a usability section which was not in the 2002 standards and increase the number of accessibility requirements from 29 to 120 and increase language accessibility requirements. The 2005 guidelines also created greater security requirements based on the new technology used in the voting machines, increasing standards in the areas of data transmission and voter verification. The 2005 guidelines also include a section on conformance testing that was not in the previous standards and included more requirements regarding wireless components. It also provides an overview of the requirements for Independent Verification systems, including requirements for a voter verified paper audit trail for states that require this feature for their voting systems. The VVSG includes the requirement that all voting system vendors submit software to a national repository, which will allow local election officials to make sure the voting system software they purchase is the same software that was certified. In addition, NIST and the TGDC are working on the next iteration of guidelines as we speak, and have said they expect to provide their recommendations to EAC by this summer. You may also want to contact Jan Kosko at NIST. Her number is 301-975-2767.

B. Regarding EAC resources, please see our operating budgets below. Note that the National Institute of Standards and Technology (NIST) receives a pass through in our budget, so that amount is not part of EAC's operating budget.

FY 2004 -- \$1.2 million

FY 2005 -- \$13.8 million (\$2.8 million of which was a pass through for NIST)

FY 2006 -- \$14 million (\$2.8 million of which was a pass through for NIST)

FY 2007 -- \$16.2 million (\$4.95 million of which was a pass through for NIST)

C. Regarding your inquiry about what EAC is doing to strengthen the certification program, the most important issue is that it is now a role the federal government has assumed for the very first time. In the past, this was done by the National Association of State Election Directors (NASSED) on a volunteer basis. NASSED is not a federal agency, and it did not receive any federal funds in its efforts. EAC made the decision not to grandfather any systems certified by NASSED. So any system seeking an EAC certification must be tested end to end. Under EAC's program, which is laid out in our Testing and Certification Program Manual, the federal government will not only operate a more rigorous testing and certification process, it will also have a Quality Monitoring Program in place. For the first time manufacturers will be held accountable through not only this program, but also under the decertification process, which would be the ultimate sanction against a manufacturer. If a system is decertified, the manufacturer may not represent the system as being certified, may not label the system as certified, and the system will be removed from the EAC's list of certified voting systems. Election officials will be notified about the decertification. The Quality Monitoring Program will allow election officials to report anomalies. EAC will visit facilities for quality control purposes, and we will perform site reviews per states' requests. In addition, this program will be transparent. Information about the process and the manufacturers and test labs that participate will be posted on the agency's website. Go [here](#) for the list of documents and information we will provide. In addition to holding the manufacturers accountable, any federal employees involved with this program will have their financial holdings reviewed for potential conflicts of interest.

###

Bryan Whitener/EAC/GOV  
04/23/2007 11:25 AM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
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bcc

Subject CQ WEEKLY article today - Election Board Facing Votes of No Confidence

Commissioners:

We just accessed the following article that appears today in Congressional Quarterly's CQ WEEKLY.



wr20070423-17election-cht.pdf

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### Election Board Facing Votes of No Confidence

CQ WEEKLY - IN FOCUS  
Congressional Quarterly  
April 23, 2007 - Page 1164  
By David Nather, CQ Staff

After the turmoil over the 2000 presidential election, Congress created a bipartisan commission that was supposed to do nice, non-controversial things: hand out some federal grants, do some studies, certify voting machines, promote voting practices that seem to work well.

Instead, the Election Assistance Commission is now surrounded by controversy and tough questions. And the same lawmakers who could barely be bothered to pay attention to its creation four years ago are putting it under the microscope now.

Democrats were enraged by the commission's handling of a report on voter fraud – the panel ordered up the report (which found little evidence of fraud), sat on the document for several months, then released a rewritten version that concluded “there is a great deal of debate” about how much voter fraud takes place. Republicans have contended that voter fraud is a big problem and benefits Democrats.

A second commission report on voter identification laws found that the laws can reduce turnout, particularly among Hispanics. The panel delayed releasing that report for months, then made it public even while refusing to endorse its conclusions.

Voting rights groups have criticized the commission's handling of the reports, and two powerful Democratic senators – Dianne Feinstein of California, who chairs the Rules and Administration Committee, and Majority Whip Richard J. Durbin of Illinois, who chairs the Appropriations subcommittee that funds the commission – have asked the panel to answer a barrage of questions. More than anything, they want to know whether the commission received “any outside communication or pressure” to delay or change the reports.

The controversy has put a harsh spotlight on the commission in recent weeks, but it's hardly the only case where the panel's actions have gotten it into trouble. Last year, the commission angered Arizona's secretary of state when it refused to grant the state permission to require voters to provide proof of citizenship when they registered by mail using federal forms. Secretary of State Jan Brewer, a Republican, called the decision “inexcusably wrong” because Arizona's voters called for the requirement

027133

in Proposition 200 and because the Department of Justice had approved it.

On top of it all, secretaries of state have been suspicious of the commission all along, fearing that it would turn into yet another federal regulatory agency. The National Association of Secretaries of State called for the commission to be abolished after the 2006 election, since its three-year authorization expired at the end of fiscal 2005. New Hampshire Secretary of State William Gardner, a Democrat, urged the group to take that position because, he said, "I could see what could potentially be coming. . . . I remember when the Federal Election Commission was basically a clearinghouse as well."

These are a lot of pressures for a four-member commission with a staff of 19 and an operating budget of just over \$11 million, which got so little attention from Congress that it took a year before its first four members won Senate confirmation. The commission also has strict limits on what it can do under the 2002 election overhaul law that created it. Among other things, it's not supposed to be a regulatory agency – though it does have some authority under the National Voter Registration Act of 1993, the "motor voter" law that was at issue in the Arizona dispute.

### 'We Took On Too Much'

Donetta L. Davidson, the Republican who in January became the commission's third chairman, says she takes seriously the questions about the reports on voter fraud and voter identification. The commission has referred the issue to its own inspector general, asking him to take a hard look at the panel's contracting procedures for outside research projects. "We want to be as transparent as possible," Davidson said.

But Davidson, who was previously Colorado's secretary of state, says the biggest problem was that the commission may have been trying to move too many reports with a small staff that mostly works with outside contractors rather than producing its own research. "I think that was our biggest mistake – being too aggressive," she said. "We just took on too much."

That explanation won't quiet the criticism. House Majority Leader Steny H. Hoyer, a Maryland Democrat and one of the authors of the 2002 law, is concerned that the commission "may have mishandled taxpayer-financed reports" and has called for hearings, said spokeswoman Stacey Farnen Bernards. Feinstein's committee already has an oversight hearing tentatively scheduled for June.

Voting rights groups are highly suspicious of the commission's actions, though there is no evidence the administration interfered with the reports. Jonah Goldman, director of the Lawyers' Committee for Civil Rights Under Law, said it "just seems a little too convenient that there's no political motive" given that the administration reportedly fired some U.S. attorneys because they were not aggressive in prosecuting alleged voter fraud.

And even those who don't subscribe to a political conspiracy find fault with the commission's handling of the reports. "I think they're just trying to avoid controversy, and trying to avoid controversy is not what we need right now," said Richard L. Hasen, an election-law expert at Loyola Law School in Los Angeles. "With all the problems we're having with elections in this country, we need bold leadership, and they're not providing it."

### Congressional Alarm Bells

Davidson insists that the commission doesn't shy away from controversial subjects. "That's our job," she said. Indeed, the law spells out a list of reports the commission is supposed to produce, and they touch on nearly every hot-button election issue imaginable: ballot designs, voter registration methods, recount procedures, the handling of misinformation about election times and locations, and even proposals to make Election Day a holiday.

Much of the commission's other work is advice and testing of voting systems. In 2005, it published guidelines that dealt with security issues, paper audit trails, and accommodations for voters with

disabilities. And last year, it started testing and certifying voting systems in preparation for the 2008 election.

Still, the way the voter fraud and identification reports were handled and the possibility that the Justice Department influenced the reports have alarmed some members of Congress.

That issue won't be settled until the hearings have been held and the inspector general's office has issued its report. But the back story of one incident with the voter fraud report – in which two Justice officials secured changes to the summaries of their interviews for the report – suggests the department was more than a bystander in the voter fraud study.

In the appendix, which summarizes all of the expert interviews conducted for the fraud report, two Justice officials' interviews are included: Craig Donsanto, director of the Election Crimes Branch of the Public Integrity Section, and John Tanner, chief of the Civil Rights Division's Voting Section. In both cases, a footnote declares that "this interviewee did not agree with the consultants' interpretation of his interview comments" and that the commission made "clarifying edits." No such note accompanies any of the other expert interviews.

Donsanto got to see the summary of his interview because he was a technical adviser to the working group. He thought the summary erroneously implied that his unit didn't pursue systematic fraud schemes anymore, only individual cases like voting by felons and non-citizens. He worried that civil rights groups would think their constituencies were being singled out. Peggy Sims, an election research specialist at the commission who managed the project, agreed and had it changed.

Tanner took issue with the suggestion that he had said the Department of Justice wasn't pursuing voter-suppression cases anymore, and provided examples of cases where it was doing just that. His remarks were corrected.

Sims said that neither Donsanto nor Tanner got to weigh in on the entire report before it was released.

Such controversies are inevitable given that some lawmakers are worried about political influence on the commission and others are concerned it might grow too powerful. Elections are emotional, and even a bipartisan panel will have disagreements. When the four commissioners tried to revisit the Arizona decision, for instance, they deadlocked on party lines, something that also happens periodically to the bipartisan Federal Election Commission.

But the commission can go a long way, voting rights groups say, simply by operating with more transparency and establishing more written procedures for making decisions. "It is a relatively young agency," said Wendy R. Weiser of the Brennan Center for Justice at the New York University School of Law. "But they've been around long enough that this is no longer acceptable."

Davidson said more transparency and better procedures are her goals as well. "Definitely I hear what Congress is saying," she said. "We're a bipartisan commission, and we want to do the right thing." Now, in a year when lawmakers say they're trying to improve oversight, it's up to Congress to decide whether it is interested enough in its own creation to help the commissioners do the right thing.

FOR FURTHER READING: Voter fraud and U.S. attorneys, CQ Weekly, p. 968; commission's creation, 2003 CQ Weekly, p. 3059; election law (PL 107-252), 2002 Almanac, p. 14-3; motor-voter law (PL 103-31), 1993 Almanac, p. 199. Source: CQ Weekly. The definitive source for news about Congress.

###



## Who's Who on the Commission

The Election Assistance Commission was created in 2002 to help states comply with federal rules and to set standards and distribute grants for voting equipment. Its members, two from each party, are nominated by the president and confirmed by the Senate to four-year terms that are renewable once.



**Donetta L. Davidson** (Republican) was appointed in 2005 and is the current chairwoman. She had been Colorado's secretary of state for six years and before that state elections director and a county clerk in suburban Denver. Her term expires in December.



**Gracia M. Hillman** (Democrat) is a longtime figure in the voting rights movement and a former executive director of the League of Women Voters. She was president of a Washington consulting company when appointed in 2003. Her term expired in 2005, but she is serving until a replacement is named.



**Caroline C. Hunter** (Republican) was deputy director of the White House Office of Public Liaison when President Bush appointed her in 2007. She is a former attorney for the Republican National Committee and ombudsman for the Bureau of Citizenship and Immigration Services. Her term expires in February 2011.



**Rosemary E. Rodriguez** (Democrat) was finishing her third year on the Denver City Council when she was appointed in 2007 to replace Ray Martinez, who resigned. She had previously been Denver's city clerk and director of boards and commissions for the mayor. Her term expires in December.

Bryan Whitener/EAC/GOV  
04/30/2007 06:03 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 4-30-07, Mon )

Commissioners,

(1) Leslie Clark of the Miami Herald plans to attend tomorrow's public meeting. Today she asked whether Florida is required to abide by EAC reply to their request. We said that EAC is the cognizant agency for most of the HAVA funding programs. We said that EAC therefore has the responsibility to advise and instruct states regarding the appropriate use of these funds consistent with the provisions of HAVA as well as circulars developed by OMB Circulars A-87 which governs the use of federal funds to purchase goods for state and local governments.

(2) Dana Burke, News Editor for the Citizen in Webster, TX is working on a story regarding voter identification requirements in Texas. She said Democrats opposed to the new legislation have referred to EAC's voter ID study and point to a correlation between more stringent voter id requirements and lower voter turnout, especially among minority groups. She noticed EAC's statement regarding a request for review, asked if the study is considered valid and whether the assessment by opponents of the legislation is correct. We sent her the following two links and replied that our Inspector General is currently reviewing the circumstances surrounding this research and that when that process is complete we'll be glad to discuss it further.


**04/16/07 - EAC Requests Review of Voter ID, Vote Fraud & Voter Intimidation Research Projects**

**News Release: 3/30/07 - EAC to Launch Comprehensive Study of Voter ID Laws**

###

027137

Margaret Sims/EAC/GOV  
05/15/2006 02:48 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
bcc  
Subject Re: working group 

History:  This message has been replied to.

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

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

027138

Margaret Sims/EAC/GOV  
05/15/2006 03:52 PM

To Gaylin Vogel/EAC/GOV@EAC  
cc Devon E. Romig/EAC/GOV@EAC, Eileen L.  
Collver/EAC/GOV@EAC  
bcc

Subject Re: working group 

The contracts for the two consultants on this project do not cover such costs. --- Peggy

027139

Margaret Sims/EAC/GOV  
05/16/2006 01:36 PM

To Eileen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
bcc


Subject Tent Cards

History: This message has been replied to and forwarded.

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

027140

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 

History:  This message has been forwarded

Oops! I hit send prematurely. Here is the attachment. --- Peggy




Working Group Attendees 5-18-06.doc

Elieen L. Collver/EAC/GOV



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 

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

Margaret Sims/EAC/GOV  
05/16/2006 01:36 PM

To Elieen L. Collver/EAC/GOV@EAC  
cc dromig@eac.gov  
Subject Tent Cards

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027141

**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.**



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  
Suite 1100  
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, [REDACTED]  
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-

027144



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

027145

## 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 and the EAC agree that the report raises more questions than provides answers.<sup>3</sup>

**Deleted:** 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.¶

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 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

<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.

<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:

- 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 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.

DRAFT

## **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. 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.

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 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 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:

- 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 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.

Juliet E. Hodgkins/EAC/GOV  
03/13/2007 06:06 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com  
cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Edited version of the Voter ID statement

Commissioners,

I intended to get this out to you much earlier today, but the day got away from me. After our hearing last week before the House Appropriations Subcommittee and the requests that were made for the draft reports of the Eagleton and Voter Fraud studies, I think that we must take a different approach to addressing the quality of these reports. While it may or may not be our intention to release these documents publicly, we MUST respond to the request made from a Congressional Committee and cannot use FOIA exemptions as FOIA does not apply to them. I believe that it is safe to assume that if we provide these documents to the Committee, even with a letter explaining their predecisional nature, that these documents will be released into the public spectrum. As such, I feel that EAC needs to make a statement regarding the quality of these reports and why we are making (or have made) a decision not to adopt the draft reports that were produced by our contractors.

Thus, I edited the statement that Karen produced with comments that reflect why we will not adopt the Eagleton report. That document is attached below. I would suggest that we put similar statements regarding Eagleton's report and the Voter Fraud draft report into a letter that I am drafting to go to the Committee with the requested documents. I will edit that letter to include similar comments tonight/tomorrow morning and will circulate it to you.

Please let me know if you have any questions, concerns, comments, etc.

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.doc

027151



## 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. 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.

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 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 consideration of voter identification requirements.

However, EAC has concerns regarding the data, analysis and statistical methodology the Contractor chose to employ in order 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 less reliable data set based upon the Current Population Survey (which was self-reported and showed a significantly

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Deleted: based on the type of voter identification requirements

higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." These data and the statistical analysis used by the Contractor were rightly criticized by independent working and peer review groups comprised of social scientists and statisticians. EAC believes that the Contractor's recommendation or draft report is so fundamentally flawed that none of the draft findings can be adopted or rehabilitated to form a reliable, accurate and useful product. Thus, EAC will not issue a report based upon this study.

**Deleted:** is not adopting the report submitted by the Contractor and, therefore, is not releasing the

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 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.

DRAFT



"Rosemary Rodriguez"  
<rosemaryrod2003@yahoo.co  
m>

03/14/2007 09:33 AM

To jhodgkins@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
chunter@eac.gov  
cc twilkey@eac.gov

bcc

Subject Re: Edited version of the Voter ID statement

Is this the latest draft?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; chunter@eac.gov;  
rosemaryrod2003@yahoo.com

Cc: twilkey@eac.gov

Sent: Tuesday, March 13, 2007 6:06:46 PM

Subject: Edited version of the Voter ID statement

Commissioners,

I intended to get this out to you much earlier today, but the day got away from me. After our hearing last week before the House Appropriations Subcommittee and the requests that were made for the draft reports of the Eagleton and Voter Fraud studies, I think that we must take a different approach to addressing the quality of these reports. While it may or may not be our intention to release these documents publicly, we MUST respond to the request made from a Congressional Committee and cannot use FOIA exemptions as FOIA does not apply to them. I believe that it is safe to assume that if we provide these documents to the Committee, even with a letter explaining their predecisional nature, that these documents will be released into the public spectrum. As such, I feel that EAC needs to make a statement regarding the quality of these reports and why we are making (or have made) a decision not to adopt the draft reports that were produced by our contractors.

Thus, I edited the statement that Karen produced with comments that reflect why we will not adopt the Eagleton report. That document is attached below. I would suggest that we put similar statements regarding Eagleton's report and the Voter Fraud draft report into a letter that I am drafting to go to the Committee with the requested documents. I will edit that letter to include similar comments tonight/tomorrow morning and will circulate it to you.


Please let me know if you have any questions, concerns, comments, etc.

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

027155

No need to miss a message. Get email on-the-go  
with Yahoo! Mail for Mobile. Get started.

Karen Lynn-Dyson/EAC/GOV  
03/14/2007 05:46 PM

To John.Weingart@rutgers.edu  
cc tom\_oneill@verizon.net  
bcc Donetta L. Davidson/EAC/GOV  
Subject Re: EAC Statement on its future study of Voter ID requirements 

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

027157

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 09:41 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com  
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov  
bcc

Subject Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

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 31507- track changes.doc Voter ID edited 31507- changes accepted.doc

027158

## 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.

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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.



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.

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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.
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<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.
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## **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).

### **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.

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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.

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.

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.
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<sup>3</sup> See EAC Public Testimony, February 8, 2007, page 109.

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- 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.

DRAFT

Caroline C. Hunter/EAC/GOV  
03/16/2007 11:43 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, [REDACTED]  
bcc  
Subject Re: Voter ID statement

This looks good to me, thank you Julie. Two things- did Eagleton approve the 2nd graph and I made a minor change to the 4th bullet as a point of clarification.

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 03/16/2007 09:41 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; [REDACTED]  
**Cc:** Thomas Wilkey; Jeannie Layson  
**Subject:** Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Caroline C. Hunter/EAC/GOV]  
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Caroline C. Hunter/EAC/GOV]

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

027165

## EAC Statement on Future Study of Voter Identification Requirements

### Background

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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 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 consideration of voter identification requirements.

However, EAC has concerns regarding the data, analysis and statistical methodology the Contractor chose to employ in order 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 less reliable data set based upon the Current Population Survey (which was self-reported and showed a significantly

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higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." These data and the statistical analysis used by the Contractor were rightly criticized by independent working and peer review groups comprised of social scientists and statisticians. EAC believes that the Contractor's recommendation or draft report is so fundamentally flawed that none of the draft findings can be adopted or rehabilitated to form a reliable, accurate and useful product. Thus, EAC will not issue a report based upon this study.

**Deleted:** is not adopting the report submitted by the Contractor and, therefore, is not releasing the

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.

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DRAFT

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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>

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### EAC Recommendations for further study and next steps

<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.

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<sup>2</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.

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<sup>4</sup> See EAC Public Testimony, February 8, 2007, page 109.

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DRAFT

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Gracia Hillman/EAC/GOV  
03/16/2007 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, rosemaryrod2003

bcc

Subject Re: Voter ID statement 

Why is it that Karen is not in the email loop on this circulation?

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 03/16/2007 09:41 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter;  
rosemaryrod2003@yahoo.com  
**Cc:** Thomas Wilkey; Jeannie Layson  
**Subject:** Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Gracia Hillman/EAC/GOV]  
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Gracia Hillman/EAC/GOV]

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

027178




Gracia Hillman/EAC/GOV

03/19/2007 03:58 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc Caroline C. Hunter/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, jlayson@eac.gov, Karen  
Lynn-Dyson/EAC/GOV@EAC,

bcc

Subject Re: Revised Voter ID statement with Eagleton comments to  
paragraph 2 

I think Comm Rodriguez makes a good point about the document needing a different title. Also, it is my understanding that Jeannie has not yet edited the draft and therefore has not yet considered layout, subtitles, typos, etc.

I have raised three concerns/questions in Footnotes 2 and 4 and in the bullet that address the working group meeting.

Lastly, I have lost track of where we are with consideration of releasing the full report. The draft document does not do that, however I thought there was a suggestion that we should consider releasing the full report?



Voter ID edited 31507- changes accepted with Eagleton comments.doc

027179

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Thomas R. Wilkey/EAC/GOV  
03/21/2007 01:17 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.  
cc  
bcc  
Subject FYI CalTech Study

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

— Forwarded by Thomas R. Wilkey/EAC/GOV on 03/21/2007 01:15 PM —



"Mike Alvarez"  
[Redacted]  
03/21/2007 01:09 PM

To twilkey@eac.gov  
cc  
Subject

Hi --

I wanted to let you know that the VTP issued a report this morning on voter identification and registration:  
<http://vote.caltech.edu/events/2006/VoterID/rpt.pdf>.

As many of our recommendations involve the EAC, I thought we'd pass this along asap.

Hope this is helpful, and we certainly continue to enjoy working with the EAC!

Mike

--

\*\*\*\*\*

R. Michael Alvarez (O)

[Redacted] Professor of Political Science (F)

[Redacted]  
Caltech/MIT Voting Technology Project  
California Institute of Technology  
Pasadena, CA 91125  
[Redacted]@caltech.edu

Contributor to Election Updates,  
<http://electionupdates.caltech.edu/blog.html>

\*\*\*\*\*

Jeannie Layson/EAC/GOV  
03/23/2007 11:11 AM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Voter ID roll out strategy

Chris Nelson talked about one size doesn't fit all, problems with audit proposal. SOS Bowen said not enough money in the bill.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Donetta L. Davidson  
**Sent:** 03/23/2007 10:08 AM EDT  
**To:** Jeannie Layson  
**Subject:** Re: Voter ID roll out strategy

Please keep me up dated

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 03/23/2007 10:06 AM EDT  
**To:** Donetta Davidson  
**Subject:** Re: Voter ID roll out strategy

Just got underway. So far, it's all "we must have paper to protect our deomcracy."

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Donetta L. Davidson  
**Sent:** 03/23/2007 10:05 AM EDT  
**To:** Jeannie Layson  
**Subject:** Re: Voter ID roll out strategy

How is that going

-----  
Sent from my BlackBerry Wireless Handheld

027190

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

**From:** Jeannie Layson  
**Sent:** 03/23/2007 10:04 AM EDT  
**To:** Donetta Davidson  
**Subject:** Re: Voter ID roll out strategy

No problem. I am at the Holt hearing.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Donetta L. Davidson  
**Sent:** 03/23/2007 10:02 AM EDT  
**To:** Jeannie Layson  
**Subject:** Re: Voter ID roll out strategy

Jeannie. I looked over your email on the bb so my review wasn't that complet, but it looked OK to me. Sorry I am out at NIST if you want to get ahold of me

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 03/22/2007 05:03 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins; Elieen Kuala; Sheila Banks; stephanie.wolson@gmail.com; Bryan Whitener; Bert Benavides  
**Subject:** Voter ID roll out strategy

Commissioners,

Attached is a memo outlining my suggested strategy for releasing the results of your tally vote. It includes an overall message and Q&A. Please let me know if you have any questions about this information, and I look forward to your input. 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)

027191



Jeannie Layson/EAC/GOV  
03/27/2007 02:02 PM

To ddavidson@eac.gov, [REDACTED],  
Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klyndyson@eac.gov,  
jthompson@eac.gov, bwhitener@eac.gov, Elieen L.  
Kuala/EAC/GOV@EAC, [REDACTED],  
bcc

Subject FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,

I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the \$500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

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) VoterIDRollOutProposal REV.doc VoterDTallyVotePRDRAFT3-27.doc

027192



**March 27, 2007**

**MEMORANDUM**

**To:** Commissioners Davidson, Rodriguez, Hunter and Hillman  
**Fr:** Jeannie Layson  
**Cc:** Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener  
**RE:** Communications Strategy for Release of Voter ID Tally Vote Results

In anticipation of the release of the results of the tally vote and all of the information provided by the contractor, I suggest taking the following steps to effectively communicate your decision. Taking this approach will help us control how the information is distributed, how it is framed, and how to focus the discussion on the positive outcome of your decision.

The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

Please let me know if you have any questions about my proposal, and I look forward to your input.

### **PRELIMINARY ACTIVITIES**

Prior to the completion of the tally vote and the subsequent release of the results and the contractor's materials, I suggest taking the following steps:

1. Discuss EAC's decision with the contractors in advance of distributing the press release and discussions with reporters so that they have an opportunity to respond and also so they will be well informed and prepared to discuss the facts with reporters or others who will most likely contact them.
2. Prior to release of EAC's decision, reach out to key Hill staffers who have been following this issue, including those members who have requested this data in the past. This should include staffers for the House Appropriations Committee Subcommittee on Financial Services and General Government since the Committee requested this information a few weeks ago. It should be made clear to committee staffers that the tally vote is the culmination of a directive made by the EAC chair in Feb. that the agency move forward to complete this project. These staffers should also be included on our list of key stakeholders.
3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

### **PUBLIC ROLL-OUT**

Once the above preliminary steps have been completed, EAC Communications will:

1. Post the press release and the related data on the website, with a link from the home page.
2. Prior to release of the tally vote decision and related data, call Richard Whitt of USA Today, Will Lester of AP, Chris Drew of the NYT, and Zach Goldfarb of the WaPo and let them know we are about to release the information. Offer interviews with the chair or other commissioners.
3. Send the press release (with a link to the research) to all recipients in the media database. This includes national dailies, as well as wire services such as the Associated Press.
4. Send the press release (with a link to the research) to all recipients in the stakeholder database. The database consists of election officials, advocates, and other interested parties, including representatives from organizations who have been critical of EAC, including VoteTrust USA and the People for the American Way.

**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 findings of the preliminary research, which focused exclusively on the 2004 general elections, 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**

We should be prepared to answer the following questions:

**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: 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 findings of the preliminary research, which focused exclusively on the 2004 general elections, were 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 2004.

### ***Bridge/Transition Phrases***

- What's really important here...
- 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  
DATE, 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. The initial research on voter identification laws are available at [www.eac.gov](http://www.eac.gov), but because this research focused exclusively on the 2004 general elections, included populations that are not eligible to vote, and did not take into account influential factors such as the competitiveness of campaigns, it was insufficient to provide meaningful conclusions and thus the Commission declined to adopt a report based on it.

“New voter identification laws have been enacted recently, and the Commission began working to determine the possible impact of these new laws,” said EAC Chair Donetta Davidson. “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.

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).

EAC’s future research on this topic will be expanded to include more than one election cycle and to examine 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:

- 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.
- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states’ requirements that 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 identity.
- 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 already collected as well as additional data from the states to develop this baseline.

- 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.

###

DRAFT



Thomas R. Wilkey/EAC/GOV  
03/29/2007 11:52 AM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. cc Sheila A. Banks/EAC/GOV@EAC, Elieen L. Kuala/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie bcc

Subject Withdrawl of Tally Vote Memo of March 28, 2007, Draft Study Of Voter Identification Requirements

Commissioners;  
The tally vote memo issued on March 28, 2007 concerning the Draft Study of Identification Requirements is hereby withdrawn.  
A new memo will be re-issued to you shortly.  
Tom Wilkey

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

027200

Jeannie Layson/EAC/GOV  
03/29/2007 02:02 PM

To ddavidson@eac.gov  
cc  
bcc  
Subject Voter ID roll out

History  This message has been forwarded

If we put out the press release tomorrow, how do you want to handle press interviews? Will you be available tomorrow? Would you rather wait and do it Monday?

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)

Jeannie Layson/EAC/GOV  
03/30/2007 02:04 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,  
jthompson@eac.gov

bcc

Subject: Voter ID update

Commissioners,

The press release, the statement, and the draft report has been posted on our site. The press release is being distributed, and is on the way to all of you and the entire EAC staff. The following activities have occurred:

1. Press release was sent in advance to Eagleton.
2. I called Wendy Weiser of the Brennan Center and sent her the info.
3. I called and sent the info to Ray M. and Paul D.
4. I sent the info to Tom Hicks and Adam A.
5. Tom called Dan Tokaji, Dan Oak, and Rep. Hinchey's office.
6. Karen gave the three EAC experts a heads up.
7. Comm. Rodriguez was interviewed by NPR (the only outlet that showed any interest), as was Eagleton. Eagleton told NPR they are glad we are expanding the scope. Interview will run on affiliates today at approximately 5:44 pm EST.
8. I offered interviews to USA Today, WaPo, NYT, and AP but none were interested.
9. I have kept Eagleton apprised of our activities.

I'll continue to keep you apprised as the day goes on, and please let me know if there's anyone else you'd like me to contact.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

027202

Jeannie Layson/EAC/GOV  
03/30/2007 04:19 PM


To d davidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
jthompson@eac.gov  
bcc  
Subject Voter ID update

Commissioners,  
Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

027205

Rosemary E.  
Rodriguez/EAC/GOV  
03/30/2007 04:14 PM

To Jeannie Layson/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
bcc  
Subject Re: Voter ID update 

Woo hoo!!!

Jeannie Layson

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

**From:** Jeannie Layson  
**Sent:** 03/30/2007 04:19 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins  
**Subject:** Voter ID update

Commissioners,  
Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

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)

027204



"Thomas, Christopher M"

<[REDACTED]>

03/30/2007 05:37 PM

To "Donetta Davidson (E-mail)" <DDavidson@eac.gov>, "Tom Wilkey (E-mail)" <twilkey@eac.gov>

cc

bcc

Subject FW: EAC to Launch Comprehensive Study of Voter ID Laws, 3-30-07

Nicely done. At the Pew event in New York there was a long hot discussion with Ray on this issue at our dinner table. Leslie and Ray were for releasing and I was opposed. Doug joined in opposing as well.

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

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

**Sent:** Friday, March 30, 2007 2:40 PM

**Subject:** EAC to Launch Comprehensive Study of Voter ID Laws, 3-30-07

## **For Immediate Release**

March 30, 2007

### Contact:

Jeannie Layson  
Bryan Whitener  
(202) 566-3100

## **EAC to Launch Comprehensive Study of Voter ID Laws**

**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).

027205

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\* 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\* and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.\*

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.

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.\* 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.

\*1 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.

\* 2 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.

\* 3 The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

\* 4 See Transcript of EAC Public Meeting, February 8, 2007, page 109.

### **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.

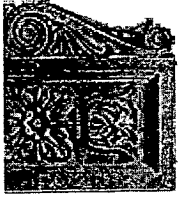
\* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

\* 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.

\* 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.

###




Bert A. Benavides/EAC/GOV  
02/06/2007 04:51 PM

To Donetta L. Davidson/EAC/GOV, PDegregorio@eac.gov  
cc Matthew Masterson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc  
Subject Fw: Voter ID talking pts - testimony Karen Lynn-dyson

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 02/06/2007 04:50 PM —

Karen Lynn-Dyson/EAC/GOV  
02/06/2007 04:46 PM

To Jeannie Layson/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC  
cc ddavidson@eac.gov, ghillman@eac.gov,  
jthompson@eac.gov, pdegregorio@eac.gov,  
twilkey@eac.gov  
Subject Re: Voter ID talking pts 

Bert, et.al-

Here is the testimony Jeannie and Julie just approved

K



Karen Dyson testimony for Voter ID meeting.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

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV  
02/06/2007 03:09 PM

To ddavidson@eac.gov, ghillman@eac.gov,  
pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov,  
klynndyson@eac.gov  
Subject Voter ID talking pts

027210

Commissioners,

Attached are suggested talking pts for the voter ID segment of the public meeting. Please let me know if you have questions or edits. After I receive everyone's input, I will circulate a final version.

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) 2-8-07 Eagleton Talking Pts.doc

027211

## **Remarks for Thursday's Public Meeting**

In late May, 2005 this research contract awarded to The State University of New Jersey at Rutgers-- The Eagleton Institute of Politics using the Ohio State University Moritz School of Law, as its subcontractor.

The portion of the contract that was awarded related to the study and analysis of voter identification requirements was to :

- Collect and analyze state legislation, administrative procedures and court cases.
- Create a state-by-state compendium of the legislation, procedures, and litigation reviewed.
- Perform an analysis of how voter identification requirements were implemented around the country and to
- Recommend alternative approaches related to the future implementation of HAVA voter identification requirements. These recommendations were to be based on a literature review of research results, a review of data on voter identification and a diagnosis of the problems and challenges related to voter identification.

This contract was extended on two occasions to allow for additional review, including an EAC-initiated review conducted by an independently convened panel of experts who provided input to Eagleton on the first draft of its statistical analysis of voter identification requirements.

The Eagleton Institute of Politics submitted its draft report to the EAC on Best Practices to Improve Voter Identification Requirements on June 28, 2006. Findings from Eagleton's study of provisional voting (that was a part of Eagleton's overall study) were included in EAC's Best Practices on Provisional Voting, which were published by EAC in October 2005.

Karen Lynn-Dyson/EAC/GOV  
02/13/2007 11:00 AM

To twilkey@eac.gov  
cc Donetta L. Davidson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC  
bcc  
Subject Next Steps on the voter ID report

Tom-

Just wanted to check in to determine what, if anything, I need to do in order to assist with the creation and delivery of EAC's report on the Voter ID study.

I assume that we will have to issue something on or about March 8.

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

027215

Jeannie Layson/EAC/GOV  
02/20/2007 01:41 PM

To Donetta L. Davidson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: HOTLINE - Rosemary Rodriguez and Caroline  
Hunter - Discharge and Confirm from Rules Committee

There is a chance that Chris Drew of the NYT may want to speak to you about our next steps for the voter ID research. I'll let you know, so stay tuned...

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Donetta L. Davidson/EAC/GOV

Donetta L.  
Davidson/EAC/GOV  
02/20/2007 01:30 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Fw: HOTLINE - Rosemary Rodriguez and Caroline Hunter -  
Discharge and Confirm from Rules Committee

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Rodriguez, Rosemary E. - City Council Dist. #3" [Rosemary.Rodriguez@ci.denver.co.us]  
**Sent:** 02/15/2007 06:39 PM  
**To:** Donetta Davidson  
**Subject:** Re: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

3038089647

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

**From:** ddavidson@eac.gov <ddavidson@eac.gov>  
**To:** Rodriguez, Rosemary E. - City Council Dist. #3  
**Sent:** Thu Feb 15 16:28:54 2007  
**Subject:** Re: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

Give me your phone number so Tom and I can call you. I can infor you then

-----  
Sent from my BlackBerry Wireless Handheld

027214

---

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

From: "Rodriguez, Rosemary E. - City Council Dist. #3" [Rosemary.Rodriguez@ci.denver.co.us]

Sent: 02/15/2007 06:26 PM

To: Donetta Davidson

Subject: Re: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

Thanks! What happens next?

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

From: d davidson@eac.gov <d davidson@eac.gov>

To: Rodriguez, Rosemary E. - City Council Dist. #3

Sent: Thu Feb 15 16:20:40 2007

Subject: Re: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

I just got notice that you are IN. Congratulations

-----  
Sent from my BlackBerry Wireless Handheld

---

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

From: "Rodriguez, Rosemary E. - City Council Dist. #3" [Rosemary.Rodriguez@ci.denver.co.us]

Sent: 02/15/2007 04:24 PM

To: Donetta Davidson

Subject: FW: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

Fyi.

\*This email is considered an "open record" under the Colorado Open Records Act and must be made available to any person requesting it unless it clearly requests confidentiality. Please indicate whether or not you want your communication to be confidential.

Rosemary E. Rodriguez

Denver City Council

027215



District 3

69 Knox Court

Denver, CO 80219

3039227755

fax: 3039374651

rosemary.rodriguez@ci.denver.co.us

---

From: Goodstein, Sam (Salazar) [[mailto:sam\\_goodstein@salazar.senate.gov](mailto:sam_goodstein@salazar.senate.gov)]  
Sent: Thursday, February 15, 2007 1:55 PM  
To: Rodriguez, Rosemary E. - City Council Dist. #3  
Subject: FW: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

FYI

---

From: Lapia, Joe (Dem-Secretary) [[mailto:Joe\\_Lapia@DEM-SEC.SENATE.GOV](mailto:Joe_Lapia@DEM-SEC.SENATE.GOV)]  
Sent: Thursday, February 15, 2007 3:48 PM  
To: D-HOTLINE@LISTSERV.SENATE.GOV  
Subject: HOTLINE - Rosemary Rodriguez and Caroline Hunter - Discharge and Confirm from Rules Committee

The Majority Leader asks unanimous consent that the Senate proceed to executive session; that the Rules Committee be discharged from further consideration of the following nomination:

Rosemary Rodriguez and Caroline Hunter to be members of the Election Assistance Commission;

Further that the nominations be confirmed and the motion to reconsider be laid on the table.

If your Senator has an objection, please contact the Democratic Cloakroom.

PLEASE DO NOT REPLY TO THIS EMAIL

027216

Calendar Entry

# Meeting Invitation Accepted This invitation has been accepted

<b>Subject</b>	Voter ID discussion	<b>Chair</b>	Donetta L. Davidson/EAC/GOV
<b>When</b>	<b>Date</b> Monday 03/05/2007 <b>Time</b> 02:30 PM - 03:30 PM (1 hour)	<b>Invitees</b>	caroline_c_hunter@yahoo.co m; ghillman@eac.gov; Juliet E_Hodakins/EAC/GOV@EAC Bert A. Benavides/EAC/GOV Sheila A Banks/EAC/GOV@EAC
<b>Where</b>	small conference room	<b>Required (to)</b>	
		<b>Optional (cc)</b>	

Commissioner Hillman will attend.

Calendar Entry

# Meeting Invitation Accepted This invitation has been accepted

**Subject** Voter ID discussion

**Chair** Donetta L. Davidson/EAC/GOV

**When**  
**Date** Monday 03/05/2007  
**Time** 02:30 PM - 03:30 PM (1 hour)

**Invitees**  
**Required (to)** caroline\_c\_hunter@yahoo.com, ghillman@eac.gov, Juliet E. Hodakins/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV  
**Optional (Cc)** Sheila A. Banks/EAC/GOV@EAC

**Where** small conference room

Calendar Entry

# Meeting Invitation Accepted

This invitation has been accepted

<b>Subject</b>	Voter ID discussion		<b>Chair</b>	Donetta L. Davidson/EAC/GOV
<b>When</b>	<b>Date</b>	Monday 03/05/2007	<b>Invitees</b>	Required (to) caroline_c_hunter@yahoo.com, ghillman@eac.gov, Juliet E. Hodokins/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV, Optional (cc) Sheila A. Banks/EAC/GOV@EAC
	<b>Time</b>	02:30 PM - 03:30 PM (1 hour)		
<b>Where</b>	small conference room			



"Rodriguez, Rosemary E. -  
City Council Dist. #3"

<[REDACTED]>  
[REDACTED]

03/02/2007 04:05 PM

To "Donetta L. Davidson/EAC/GOV" <ddavidson@eac.gov>

cc

bcc

Subject Accepted: Voter ID discussion



winmail.dat

027220



"Rosemary Rodriguez"

03/02/2007 04:07 PM

To ddavidson@eac.gov

cc

bcc

Subject Re: Invitation: Voter ID discussion (Mar 5 02:30 PM EST in small conference room)

I cannot open the html file....but accepted the meeting

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

From: "ddavidson@eac.gov" <ddavidson@eac.gov>

To: [REDACTED]; ghillman@eac.gov; jhodgkins@eac.gov;  
klynndyson@eac.gov; [REDACTED] twilkey@eac.gov

Cc: bbenavides@eac.gov; sbanks@eac.gov

Sent: Thursday, March 1, 2007 1:30:38 PM

Subject: Invitation: Voter ID discussion (Mar 5 02:30 PM EST in small conference room)

Description

BEGIN:VCALENDAR

X-LOTUS-CHARSET:UTF-8

VERSION:2.0

PRODID:-//Lotus Development Corporation//NONSGML Notes 7.0//EN

METHOD:REQUEST

BEGIN:VTIMEZONE

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BEGIN:STANDARD

DTSTART:19501029T020000

TZOFFSETFROM:-0400

TZOFFSEETTO:-0500

RRULE:FREQ=YEARLY;BYMINUTE=0;BYHOUR=2;BYDAY=-1SU;BYMONTH=10

END:STANDARD

BEGIN:DAYLIGHT

DTSTART:19500402T020000

TZOFFSETFROM:-0500

TZOFFSEETTO:-0400

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END:DAYLIGHT

END:VTIMEZONE

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DTEND;TZID="Eastern":20070305T153000

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DTSTAMP:20070301T203038Z

027221

SEQUENCE:0  
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;CN="Donetta L. Davidson/EAC/GOV";RSVP=FALSE  
:mailto:ddavidson@eac.gov  
ATTENDEE;ROLE=REQ-PARTICIPANT;PARTSTAT=NEEDS-ACTION;RSVP=TRUE  
:mailto:caroline\_c\_hunter@yahoo.com  
ATTENDEE;ROLE=REQ-PARTICIPANT;PARTSTAT=NEEDS-ACTION;RSVP=TRUE  
:mailto:ghillman@eac.gov  
ATTENDEE;ROLE=REQ-PARTICIPANT;PARTSTAT=NEEDS-ACTION  
;CN="Juliet E. Hodgkins/EAC/GOV";RSVP=TRUE:mailto:jhodgkins@eac.gov  
ATTENDEE;ROLE=REQ-PARTICIPANT;PARTSTAT=NEEDS-ACTION;RSVP=TRUE  
:mailto:klynndyson@eac.gov  
ATTENDEE;ROLE=REQ-PARTICIPANT;PARTSTAT=NEEDS-ACTION;RSVP=TRUE  
:mailto:rosemaryrod2003@earthlink.net  
ATTENDEE;ROLE=REQ-PARTICIPANT;PARTSTAT=NEEDS-ACTION;RSVP=TRUE  
:mailto:twilkey@eac.gov  
ATTENDEE;ROLE=OPT-PARTICIPANT;PARTSTAT=NEEDS-ACTION  
;CN="Bert A. Benavides/EAC/GOV";RSVP=TRUE:mailto:bbenavides@eac.gov  
ATTENDEE;ROLE=OPT-PARTICIPANT;PARTSTAT=NEEDS-ACTION  
;CN="Sheila A. Banks/EAC/GOV";RSVP=TRUE:mailto:sbanks@eac.gov  
CLASS:PUBLIC  
DESCRIPTION;ALTREP="CID:<FFFF\_\_=0AABBF802DFFC40178f9e8a93df938690@gsa.gov>":  
SUMMARY:Voter ID discussion  
LOCATION:small conference room  
ORGANIZER;CN="Donetta L. Davidson/EAC/GOV";SENT-BY="mailto:  
:ekuala@eac.gov":mailto:ddavidson@eac.gov  
UID:DBF58FCD47BB478285257291006FC687-Lotus\_Notes\_Generated  
X-LOTUS-BROADCAST:FALSE  
X-LOTUS-UPDATE-SEQ:1  
X-LOTUS-UPDATE-WISL:\$S:1;\$L:1;\$B:1;\$R:1;\$E:1  
X-LOTUS-NOTESVERSION:2  
X-LOTUS-NOTICETYPE:I  
X-LOTUS-APPTTYPE:3  
X-LOTUS-CHILD\_UID:DBF58FCD47BB478285257291006FC687  
END:VEVENT  
END:VCALENDAR


---

Finding fabulous fares is fun.

Let Yahoo! FareChase search your favorite travel sites to find flight and hotel bargains.

027222

Karen Lynn-Dyson/EAC/GOV  
03/06/2007 05:15 PM

To "Rosemary Rodriguez"  
[REDACTED] INTERNAL,  
Donetta L. Davidson/EAC/GOV@EAC, Caroline C.  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
Jeannie Layson/EAC/GOV@EAC  
bcc  
Subject Close-to-final draft of Voter ID statement 

Commissioners-

Attached please find the draft statement on voter ID requirement in which I have attempted to incorporate your suggested changes. Those changes are highlighted in yellow and bolded.

You'll want to pay particular attention to the options for the third paragraph in which I have offered two choices:

One choice allows you to release all of Eagleton's documents, including the testimony, the 32-page report and the statistical analysis( Appendix C).

The second choice only includes the testimony and does not include the 32 page summary or the data analysis ( Appendix C).

Once you have reached a consensus on one of the choices, I'll ask Jeannie to take a close look at grammar and syntax.

Thanks



New EAC Voter ID Report.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

027223



## 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 entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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.

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issues court decisions, an annotated bibliography on voter identification issues and state statutes and regulations affecting voter identification can be found, along with the contractor's testimony, on EAC's website: [www.EAC.gov](http://www.EAC.gov).

OR

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. The contractor's full report describing the statistical and data analysis which it performed along with the testimony that was delivered summarizing this can be found on EAC's website. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issue court decisions, the statistical and data analysis of the effect of voter identification requirements on turnout, an annotated bibliography on voter identification issues and state statutes and regulations affecting voter identification can also be found on EAC's website: [www.EAC.gov](http://www.EAC.gov).

## EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important beginning step in the Commission's consideration of voter identification requirements. From the contractor's statistical analysis and compilation of data EAC considers it advisable to engage in a longer-term, more systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A 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.
- To collect a baseline of information on what factors may effect or influence Citizen Voting Age Population (CVAP) voter participation. **At a minimum data on voter participation statistics for the 2004 and 2008 election cycles would be collected.** Other factors to be examined will include various voter identification requirements, whether or not the race was "hotly" contested and, other environmental or political factors.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into whether voter identification requirements have had an impact over several elections on factors such as voter turnout, registration, and fraud.


EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- **Convening 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 specific issues to be covered in the study and timelines for completing an EAC study on voter identification.**
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;
- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;

- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.

DRAFT

Karen Lynn-Dyson/EAC/GOV  
03/07/2007 09:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
bcc  
Subject Re: Revised EAC Statement 

Commissioners-

Attached please find the revised EAC Statement on Voter Identification requirements.

I have attempted to craft language that expresses EAC's concern with the statistical analysis and research methodology that Eagleton employed, and to capture the essence of what EAC found problematic with that analysis.

In this draft I have kept the two options as I have not heard which option the Commissioners have chosen (e.g. for the release of all or only part of the Eagleton report)



New EAC Voter ID Report.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

027227

## EAC Statement on Future Study of Voter Identification Requirements

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OR

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- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.


DRAFT

Caroline C. Hunter/EAC/GOV  
03/07/2007 10:13 AM

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, Karen  
bcc  
Subject Re: Revised EAC Statement 

Thank you, Karen. I believe we are getting closer to a consensus. I have a few comments which I will send to everyone soon.  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
03/07/2007 09:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, "Rosemary Rodriguez" <rosemaryrod2003@yahoo.com>, twilkey@eac.gov, Gracia Hillman/EAC/GOV@EAC  
Subject Re: Revised EAC Statement 

Commissioners-

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In this draft I have kept the two options as I have not heard which option the Commissioners have chosen (e.g. for the release of all or only part of the Eagleton report)



New EAC Voter ID Report.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

027231



## 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 entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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.

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issues, court decisions, an annotated bibliography on voter identification issues and state statutes and regulations affecting voter identification can be found along with the contractor's testimony, on EAC's website: [www.EAC.gov](http://www.EAC.gov).

OR

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## EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important beginning 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 categorize and analyze voter identification requirements. Therefore, EAC considers it advisable to engage in a longer-term, more systematic review of voter identification requirements and is recommending that additional study on the topic must take into account more than one Federal election cycle, must consider additional environmental and political factors that effect voter participation, and must take into account changing state laws and regulations related to voter identification requirements. At a minimum EAC will engage, on an ongoing basis, in:

- A 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 identity.
- To collect a baseline of information on what factors may effect or influence Citizen Voting Age Population (CVAP) voter participation. **At a minimum data on voter participation statistics for the 2004 and 2008 election cycles would be collected.** Other factors to be examined will include various voter identification requirements, whether or not the race was "hotly" contested and, other environmental or political factors.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into whether voter identification requirements have had an impact over several elections on factors such as voter turnout, registration, and fraud.

EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:


- **Convening 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 specific issues to be covered in the study and timelines for completing an EAC study on voter identification.**
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter

registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;

- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;
- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.

DRAFT

Juliet E. Hodgkins/EAC/GOV  
03/08/2007 04:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc jlayson@eac.gov, Gracia Hillman/EAC/GOV@EAC,  
"Davidson, Donetta" <ddavidson@eac.gov>, Caroline C.  
Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com  
bcc  
Subject Re: Final EAC statement on Voter ID report 

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

027235

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

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



Final EAC Voter ID Statement.doc Voter ID statement jth edits.doc

## 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 entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

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On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issues court decisions, an annotated bibliography on voter identification issues and, state statutes and regulations affecting voter identification can be found along with the contractor's testimony, on EAC's website: [www.EAC.gov](http://www.EAC.gov).

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## EAC Recommendations for further study and next steps

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However, EAC has concerns regarding the research and statistical methodology the contractor chose to employ in order to categorize and analyze voter identification requirements. Therefore, EAC considers it advisable to engage in a longer-term, more systematic review of voter identification requirements and is recommending that additional study on the topic must take into account more than one Federal election cycle, must consider additional environmental and political factors that effect voter participation, and must take into account changing state laws and regulations related to voter identification requirements. At a minimum EAC will engage, on an ongoing basis, in:

- A 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.
- To collect a baseline of information on what factors may effect or influence Citizen Voting Age Population (CVAP) voter participation. **At a minimum data on voter participation statistics for the 2004 and 2008 election cycles would be collected.** Other factors to be examined will include various voter identification requirements, whether or not the race was "hotly" contested and, other environmental or political factors.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into whether voter identification requirements have had an impact over several elections on factors such as voter turnout, registration, and fraud.

EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- **Convening 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 specific issues to be covered in the study and timelines for completing an EAC study on voter identification.**
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter

registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;

- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;
- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.

DRAFT



## 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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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.

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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).

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### EAC Recommendations for further study and next steps

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However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements.

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Therefore, EAC is not adopting the Contractor's full report that was submitted and is not releasing this report

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EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. EAC's additional study on the topic will include more than

one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider 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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- 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.

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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.

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- 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 specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.

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- Study how certain 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.

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- 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.

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- Track state policies and procedures for early voting, absentee voting, and vote-by-mail. The data collected through this tracking will then be compared to various state voter identification policies and procedures.

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Karen Lynn-Dyson/EAC/GOV  
03/09/2007 10:49 AM

To "Rosemary Rodriguez"  
cc chunter@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
jhodgkins@eac.gov, jlayson@eac.gov  
bcc  
Subject Re: Final EAC statement on Voter ID report

Commissioners-

As requested, Jeannie Layson will take the attached statement and prepare a final version for Commissioner's review and tally vote on Monday.

Regards-

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

"Rosemary Rodriguez"  
<rosemaryrod2003@yahoo.com>

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov  
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov  
Subject Re: Final EAC statement on Voter ID report  
t

are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>  
To: klynndyson@eac.gov

027242



Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

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

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

027244



"Rosemary Rodriguez"  
<rosemaryrod2003@yahoo.com>  
03/09/2007 02:04 PM

To klynndyson@eac.gov  
cc chunter@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
jhodgkins@eac.gov, jlayson@eac.gov  
bcc

Subject Re: Final EAC statement on Voter ID report

I will be in the office Tuesday afternoon. Thanks.

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

From: "klynndyson@eac.gov" <klynndyson@eac.gov>

To: [REDACTED]

Cc: chunter@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov;  
jhodgkins@eac.gov; jlayson@eac.gov

Sent: Friday, March 9, 2007 10:49:00 AM

Subject: Re: Final EAC statement on Voter ID report

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

"Rosemary Rodriguez"  
[REDACTED]

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov  
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov  
Subject Re: Final EAC statement on Voter ID report  
t

027245

are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: klynndyson@eac.gov

Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;  
chunter@eac.gov; [REDACTED]

Sent: Thursday, March 8, 2007 4:35:27 PM

Subject: Re: Final EAC statement on Voter ID report

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC

cc

Subject Final EAC statement on Voter ID report

027246

Julie/Jeannie-

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Karen Lynn-Dyson  
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1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

Food fight? Enjoy some healthy debate  
in the Yahoo! Answers Food & Drink Q&A.



Karen Lynn-Dyson/EAC/GOV  
03/12/2007 12:09 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [REDACTED]@om  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, twilkey@eac.gov, [REDACTED]@m  
bcc

Subject Next draft of the Voter ID statement

Commissioners-

It appears that I may be the latest casualty of the EAC "bug". As such, I'm leaving early today and may or may not be in the office tomorrow.

Jeannie and I have spoken of her getting the next draft of the statement from the four of you and preparing the final edited draft for the tally vote.

I would imagine Tom's office can put together the tally vote for this document and get it to you all tomorrow, if you have been able to reach a consensus on the final document. If this is not seen as urgent and I am back in the office I will be happy to get the material together for Wednesday.

Thanks

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

027248



"Silrum, Jim"  
[Redacted]

02/05/2007 04:39 PM

To "Donetta Davidson" <ddavidson@eac.gov>

cc

bcc

Subject Voter ID

History

 This message has been replied to.

Donetta,

Do you think it's possible that the people completing the study got it wrong in that they meant South Dakota rather than North Dakota? South Dakota is the one that is always in the news about their ID law.

Thanks,

*Jim Silrum*

Deputy Secretary of State  
State of North Dakota  
600 East Boulevard Avenue  
Bismarck ND 58505-0500  
701-328-3660 - Voice  
701-328-2992 - Fax  
[Redacted]

027249

Jeannie Layson/EAC/GOV  
02/06/2007 03:09 PM

To d davidson@eac.gov, ghillman@eac.gov,  
pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov,  
klynndyson@eac.gov  
bcc  
Subject Voter ID talking pts

Commissioners,

Attached are suggested talking pts for the voter ID segment of the public meeting. Please let me know if you have questions or edits. After I receive everyone's input, I will circulate a final version.

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) 2-8-07 Eagleton Talking Pts.doc

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## **VOTER ID REPORT TALKING POINTS**

**Public Meeting**

**February 8, 2007**

### **I. Chair Davidson's Opening Comments for Eagleton Portion of Public Meeting**

- This has been a highly anticipated report.
- We received the Eagleton draft in June 2006.
- We immediately realized that the data presented more questions than answers.
- Since we have limited staff and resources, we were unable to immediately resolve these questions. Our top priorities at the time were the lab accreditation and the voting system certification programs.
- In addition, we had to focus our efforts on getting information to election officials and the public concerning the November elections, especially because so many jurisdictions were using new voting equipment.
- Now that we have launched those programs, we are once again turning our attention to this research project.
- Let me introduce Tom O'Neil and Tim Vercellotti. They are here today to pick up where we left off, and to give us a brief overview of the research they conducted regarding voter identification.

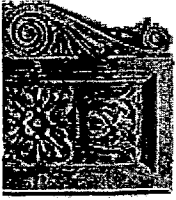
### **II. Karen Lynn-Dyson Testimony**

### **III. Eagleton Testimony**

### **IV. Commissioners Q&A**

### **V. Chair Closes Eagleton Portion of Public Meeting**

- Obviously many questions have been raised today.
- Next step is for EAC to determine how to move forward.
- I request that Tom instruct staff to provide recommendations on how to proceed within the next 30 days.
- Once we determine how to move forward and what the final culmination of this initial research will be, we will notify everyone.
- Thank you Tom and Tim for your hard work and efforts in the study of this important topic.



Bert A. Benavides/EAC/GOV  
02/06/2007 04:37 PM

To Donetta L. Davidson/EAC/GOV, Thomas R.  
Wilkey/EAC/GOV@EAC, PDelegorio@eac.gov  
cc Matthew Masterson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Fw: Voter ID Presentation --Eagleton/Moritz (testimony,  
O'Neill and Vercellotti)

----- Forwarded by Bert A. Benavides/EAC/GOV on 02/06/2007 04:33 PM -----



"Thomas O'Neill"

02/06/2007 03:42 PM

To bbenavides@eac.gov

cc

Subject Voter ID Presentation --Eagleton/Moritz

Bert,

Attached is the text of the presentation that Tim Vercellotti and I will make to the EAC on Thursday, February 8. Thanks for your help in making arrangements for this meeting. Please let me know if you need anything else from us in advance of the meeting.

See you Thursday.

Tom O'Neill



VIDPresentation020807.doc

027252

**Presentation to the  
U. S. Election Assistance Commission  
February 8, 2007**

Deleted: 6

Summarizing a report on  
Best Practices to Improve Voter Identification Requirements  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252  
Submitted on June 28, 2006  
by  
The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University

Thomas M. O'Neill  
Project Director  
And  
Tim Vercellotti  
Assistant Research Professor  
Assistant Director, Center for Public Interest Polling

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

Introduction

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Our report, submitted to the EAC last June, provided information on voter identification practices in the 2004 election. It made recommendations for best practices to evaluate future proposals for voter ID requirements. In particular, we recommended a concerted, systematic effort to collect and evaluate information on voter ID requirements and turnout from the states. This report was a companion to our report on Provisional Voting, submitted to the EAC in November 2005.

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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. Unfortunately, our colleagues from Moritz could not be with us today because of teaching obligations.

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Our 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.

Voter ID requirements are just one set of election rules 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 chooses whether to vote 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 may be, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decreases.

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We conducted our research before last year's election, when the debate over voter ID requirements was sharp and polarized. We took seriously our charge from the EAC, which was not to enter the national debate, but rather to explore if an empirical study could suggest how we might estimate the effects of different voter ID requirements on turnout. That analysis, of course, would be a sensible first step to assess tradeoffs between ballot security and ballot access and provide valuable information for all parties to the debate.

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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 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 net integrity of the ballot may not have been improved.

A key part of our work was a statistical analysis to examine how turnout may vary under different voter identification requirements. We used this statistical study to develop a model to illuminate the relationships between voter ID requirements and turnout. The 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.

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Tim Vercellotti led that phase of our research and will describe his methods and conclusions.

Results of Statistical Analysis

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Our research included an examination of variation in turnout based on voter ID requirements in the 50 states and the District of Columbia. We examined this question using aggregate data at

the county level gathered from the U.S. Census and other sources, and individual-level data from the November 2004 Current Population Survey.

Drawing from the research conducted by the Moritz College of Law, we were able to classify the states into one of five voter ID categories. Voters either had to:

1. state their name,
2. sign their name,
3. match their signatures to those already on file,
4. provide a non-photo ID,
5. provide a photo ID.

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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. The five categories for minimum requirements were:

1. stating one's name,
2. signing one's name,
3. matching one's signature to a signature on file,
4. providing a non-photo identification, or
5. swearing an affidavit.

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Analysis of the aggregate data showed that the average turnout in states requiring photo identification as a maximum requirement was 58.1 percent compared to 64.2 percent in states that required voters to give their name as the maximum requirement. The differences were slightly smaller when we examined states in terms of their minimum requirements, with 60.1 percent of voters turning out in states that required an affidavit compared to 63 percent in states that required voters to give their name as the minimum requirement.

The analyses of aggregate data also included models that controlled for other factors that might influence turnout, such as whether a county was in a presidential battleground state, the length of time between the close of the registration period and Election Day, and the demographic composition of the county in terms of race and ethnicity, age, and household income. Controlling for those factors, the maximum requirements of providing a signature match or a non-photo identification showed a negative effect on voter turnout when compared to counties in states that only required voters to give their names. None of the voter identification requirements showed an effect on turnout, however, in the model that coded counties according to the states' minimum requirements.

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Analyses of the individual-level data from the November 2004 Current Population Survey also indicated relationships between voter ID requirements and turnout. Controlling for contextual factors, such as whether a voter resided in a presidential battleground state, and demographic characteristics, such as a voter's gender, race, ethnicity, age, and education, the data showed that registered voters in states that require photo identification as a maximum requirement were 2.9 percent less likely to say they had voted compared to registered voters in states that required voters to state their names. Examining states within the context of minimum identification requirements showed that registered voters in states requiring affidavits were four

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percent less likely to say they had voted compared to registered voters in states that required individuals to give their names at the polling place.

Breaking down the Current Population Survey sample by race and ethnicity also revealed interesting patterns. Photo identification and affidavit requirements were negatively associated with whether white registered voters said they voted compared to their counterparts in states requiring registered voters to give their names. But African-American, Hispanic, and Asian-American registered voters in states that required photo identification as the maximum requirement or an affidavit as the minimum requirement were no less likely to say they had voted than their racial or ethnic counterparts in states that simply required voters to give their names.

The most consistent difference emerged in states that required non-photo identification as a maximum or a minimum requirement. In five of six statistical models, African-American, Hispanic, and Asian-American registered voters in non-photo identification states were less likely to say they had voted in November 2004 than their racial or ethnic counterparts in states that required voters to state their names as a maximum or minimum identification requirement.

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 observation does not answer the question as to why photo identification requirements did not have a more uniform effect across groups in 2004. Of course, photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement. But the finding that photo identification requirements were associated with a lower probability that white registered voters said they had voted, and the absence of a similar relationship within other racial and ethnic groups, runs counter to concerns expressed by some in the debate over voter ID. This finding points up the need for further research in this area, perhaps with a view to comparing turnout rates over time before and after a photo identification requirement takes effect, to further isolate potential relationships between photo ID requirements and turnout.

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In examining the link between voter identification requirements and 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? 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.

#### Conclusions from the Research

The statistical analysis suggests that stricter voter ID requirements can be associated with lower turnout. It was not designed, however, to look at the other side of the balance equation: do tighter ID requirements reduce multiple voting or voting by ineligible voters? The scope of our research as defined by the EAC excluded assessing the dynamics and incidence of vote fraud.

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We believe, however, that sound policy on voter ID should begin with an examination of the tradeoffs between ballot security and ballot access.

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. The EAC's recent study<sup>1</sup> of election crimes found, for example, that there has never been a comprehensive, nationwide study of voting fraud and intimidation.

Without a better understanding of the incidence of vote fraud and its relationship to voter ID, for now, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility. Election law should provide the clarity and certainty needed to forestall destabilizing challenges to election outcomes. Absent a sound, empirical basis for striking a wise balance between voter ID and ballot access, legal challenges may increase, not just to the process but to electoral outcomes.

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The analysis of litigation conducted by the Moritz College of Law for our research 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.

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To strike that balance requires a more precise understanding of how voter ID requirements affect turnout. A first step in that direction would be to encourage or require states to collect and report additional data, including:

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- The reasons potential voters are required to cast a provisional ballot and
- The reasons for rejecting provisional ballots.

#### Recommendations for consideration and action by the EAC

1. Encourage or sponsor further research to clarify the connection between voter ID requirements and the number of potential voters able to cast a ballot that is counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements. The analysis will help focus the attention of the public and policy-makers on the tradeoff between ballot access and ballot security. A "Voter Impact Statement," to be drafted and offered for public review and comment before the adoption of new identity requirements, would estimate the number and demographics of:
  - Eligible, potential voters who may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and
  - Assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

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The data collection and analysis recommended in this report would help make feasible an empirically-based assessment of the effects on voter participation of proposed identification requirements. That assessment could improve the quality of the debate on this polarizing topic.

<sup>1</sup> U. S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study*, December 2006.

3. Encourage or require the states to collect and report reliable, credible information on the relationship between ballot access and ballot security. A compilation by EAC of this information would provide a 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 studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
4. Encourage or require states to sponsor surveys of voters to be conducted by local election officials. Such surveys would determine why those who cast a provisional ballot were found ineligible to cast a regular ballot and illuminate the frequency with which ID issues divert voters into the provisional ballot line. The connection between Voter ID requirements and provisional ballots is, of, course, close. Voters who lack required ID will likely vote provisionally, thus placing greater demands on a system that may be hard pressed to meet those demands. Asking voters what they know about ID requirements would also provide useful context for evaluating the effect of those requirements on electoral participation.<sup>2</sup>
5. Recommend as a best practice that state election officials conduct spot checks on how the identification process actually works at polling places. These spot checks could provide information on how closely actual practice tracks statutory or regulatory requirements.
6. 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 11 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, and the safe harbor provision in presidential elections.

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#### A final thought

A voting system that requires voters to produce an ID may prevent the ineligible from voting. It may also prevent some eligible voters from casting a ballot. If the ID requirements block a few ineligible voters from the polls at the cost of preventing an equal or greater number of 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.

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Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and what form that requirement should take) will weigh value judgments as well as available factual evidence. We did our work on the premise that increased understanding of the facts relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

<sup>2</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.

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We hope that premise is realistic, and we also hope that this research has helped the Commissioners and the interested public to clarify their thinking on this polarizing topic.


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On behalf of the Eagleton – Moritz research team, we thank you for the opportunity to contribute to the national debate.

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Karen Lynn-Dyson/EAC/GOV  
02/06/2007 04:46 PM

To Jeannie Layson/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC  
cc ddavidson@eac.gov, ghillman@eac.gov,  
jthompson@eac.gov, pdegregorio@eac.gov,  
twilkey@eac.gov  
bcc  
Subject Re: Voter ID talking pts 

Bert, et.al-

Here is the testimony Jeannie and Julie just approved

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

Jeannie Layson/EAC/GOV

02/06/2007 03:09 PM

To ddavidson@eac.gov, ghillman@eac.gov, pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, klynndyson@eac.gov  
Subject Voter ID talking pts

Commissioners,  
Attached are suggested talking pts for the voter ID segment of the public meeting. Please let me know if you have questions or edits. After I receive everyone's input, I will circulate a final version.

Jeannie Layson

027260

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) 2-8-07 Eagleton Talking Pts.doc Karen Dyson testimony for Voter ID meeting.doc

027261

## **VOTER ID REPORT TALKING POINTS**

### **Public Meeting**

**February 8, 2007**

#### **I. Chair Davidson's Opening Comments for Eagleton Portion of Public Meeting**

- This has been a highly anticipated report.
- We received the Eagleton draft in June 2006.
- We immediately realized that the data presented more questions than answers.
- Since we have limited staff and resources, we were unable to immediately resolve these questions. Our top priorities at the time were the lab accreditation and the voting system certification programs.
- In addition, we had to focus our efforts on getting information to election officials and the public concerning the November elections, especially because so many jurisdictions were using new voting equipment.
- Now that we have launched those programs, we are once again turning our attention to this research project.
- Let me introduce Tom O'Neil and Tim Vercellotti. They are here today to pick up where we left off, and to give us a brief overview of the research they conducted regarding voter identification.

#### **II. Karen Lynn-Dyson Testimony**

#### **III. Eagleton Testimony**

#### **IV. Commissioners Q&A**

#### **V. Chair Closes Eagleton Portion of Public Meeting**

- Obviously many questions have been raised today.
- Next step is for EAC to determine how to move forward.
- I request that Tom instruct staff to provide recommendations on how to proceed within the next 30 days.
- Once we determine how to move forward and what the final culmination of this initial research will be, we will notify everyone.
- Thank you Tom and Tim for your hard work and efforts in the study of this important topic.

## **Remarks for Thursday's Public Meeting**

In late May, 2005 this research contract awarded to The State University of New Jersey at Rutgers-- The Eagleton Institute of Politics using the Ohio State University Moritz School of Law, as its subcontractor.

The portion of the contract that was awarded related to the study and analysis of voter identification requirements was to :


- Collect and analyze state legislation, administrative procedures and court cases.
- Create a state-by-state compendium of the legislation, procedures, and litigation reviewed.
- Perform an analysis of how voter identification requirements were implemented around the country and to
- Recommend alternative approaches related to the future implementation of HAVA voter identification requirements. These recommendations were to be based on a literature review of research results, a review of data on voter identification and a diagnosis of the problems and challenges related to voter identification.

This contract was extended on two occasions to allow for additional review, including an EAC-initiated review conducted by an independently convened panel of experts who provided input to Eagleton on the first draft of its statistical analysis of voter identification requirements.

The Eagleton Institute of Politics submitted its draft report to the EAC on Best Practices to Improve Voter Identification Requirements on June 28, 2006. Findings from Eagleton's study of provisional voting (that was a part of Eagleton's overall study) were included in EAC's Best Practices on Provisional Voting, which were published by EAC in October 2005.

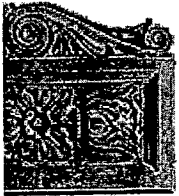


Jeannie Layson/EAC/GOV  
01/25/2007 05:25 PM

To Bert A. Benavides/EAC/GOV@EAC  
cc bbenavides@eac.gov, bhancock@eac.gov, Bryan Whitener/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L.  
bcc  
Subject Re: Revised draft agenda for Public meeting 2-08-07 

This agenda includes the name of the Eagleton doc, "Best Practices to Improve Voter Identification Requirements." Based on the feedback from this morning, I think it should simply be labled as "Briefing on Eagleton's Research on Voter Identification."

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Bert A. Benavides/EAC/GOV  
01/25/2007 12:01 PM

To Donetta L. Davidson/EAC/GOV, PDegregorio@eac.gov, Gracia Hillman/EAC/GOV, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV, bhancock@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV, Curtis Crider/EAC/GOV@EAC, Roger Larouche/CONTRACTOR/EAC/GOV@EAC  
cc Elieen L. Kuala/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV, Bryan Whitener/EAC/GOV@EAC, bbenavides@eac.gov  
Subject Revised draft agenda for Public meeting 2-08-07

Attached is the revised draft agenda for our 2-08-07 Public Meeting. Please review and let me know of your approval so we may proceed to post on the website. Thanks.



Public Meeting, 2-08-07, Wash., Draft Agenda.doc

027264

Thomas R. Wilkey/EAC/GOV  
01/25/2007 05:35 PM

To Jeannie Layson/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC  
cc Brian Hancock/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L.  
bcc  
Subject Re: Revised draft agenda for Public meeting 2-08-07

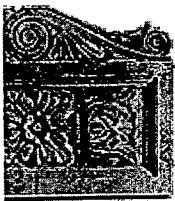
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Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 01/25/2007 05:25 PM  
**To:** Bert Benavides  
**Cc:** Bert Benavides; Brian Hancock; Bryan Whitener; Donetta Davidson; Elieen Kuala; Gavin Gilmour; Gracia Hillman; Juliet Hodgkins; Karen Lynn-Dyson; Matthew Masterson; Paul DeGregorio; Sheila Banks; Thomas Wilkey; Bryan Whitener  
**Subject:** Re: Revised draft agenda for Public meeting 2-08-07

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Bert A. Benavides/EAC/GOV



Bert A. Benavides/EAC/GOV  
01/25/2007 12:01 PM

To Donetta L. Davidson/EAC/GOV, PDeGregorio@eac.gov, Gracia Hillman/EAC/GOV, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV, Jeannie Layson/EAC/GOV, bhancock@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV, Curtis Crider/EAC/GOV@EAC, Roger Larouche/CONTRACTOR/EAC/GOV@EAC  
cc Elieen L. Kuala/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV, Bryan Whitener/EAC/GOV@EAC, bbenavides@eac.gov  
Subject Revised draft agenda for Public meeting 2-08-07

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[attachment "Public Meeting, 2-08-07, Wash., Draft Agenda.doc" deleted by Thomas R. Wilkey/EAC/GOV]



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

1225 New York Avenue, NW  
Suite 150  
Washington, DC  
Thursday, February 08, 2007  
10:00 AM – 1:00 PM EST

Call to Order (Chair Davidson)

Pledge of Allegiance (Chair Davidson)

Roll Call

Adoption of Agenda (Chair Davidson)

Welcoming Remarks (Chair Davidson)

### OLD BUSINESS:

- Correction and Approval of Minutes from the December 07, 2006 Meeting (Chair Davidson)
- Report of the Executive Director (Thomas Wilkey)

### NEW BUSINESS:

- Update on EAC Interim Laboratory Accreditation Program
  - Brian Hancock, Director, Voting Systems Certification, U. S. Election Assistance Commission
- Update on EAC/NVLAP Accreditation Programs
  - Mary H. Saunders, Chief, Standards Services Division, National Institute of Standards and Technology (NIST)




**Break**

- **Briefing on Eagleton's Research on Voter Identification – “Best Practices to Improve Voter Identification Requirements,”**
  - **Karen Lynn-Dyson, Research Director, U. S. Election Assistance Commission**
  - **John Weingart, Associate Director, Eagleton Institute of Politics, Rutgers University**
  
- **EAC Audit Process and State Observations**
  - **Curtis Crider, Inspector General, U. S. Election Assistance Commission**
  - **Roger LaRouche, Assistant Inspector General, U. S. Election Assistance Commission**
  - **Dan Glotzer, HAVA Grant Manager, Texas Secretary of State**
  - **Marci Andino, Executive Director, State Election Commission, South Carolina**

**Commissioners' Closing Remarks**

**Adjournment**

Karen Lynn-Dyson/EAC/GOV  
01/26/2007 11:36 AM

To Donetta L. Davidson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Short introduction to the Eagleton Voter ID report 

Chair Davidson and Julie-

Attached are the two draft documents I have created related to the Voter Identification Study.

I look forward to our 2:00 PM conversation.



EAC Voter ID Report.doc New EAC Voter ID Report.doc

Karen Lynn-Dyson  
Research Director  
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027268

## **EAC Report on Voter Identification**

### **Executive Summary**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 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 sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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 found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## Introduction

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure broad access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

## Methodology of the Study

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook 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. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC



survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## **Study Oversight and Methodological Review**

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

### **The Eagleton Institute of Politics Peer Review Group**

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### **The EAC Peer Review Group**

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninisky, Massachusetts Institute of Technology

## **Summary of the Research**

### **Maximum and Minimum Voter Identification Requirements**

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: 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. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the “maximum” requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data**) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### **Aggregate-level statistical analysis**

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r = -.30$ ,  $p$  less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r = -.20$ ,  $p = .16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. 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 was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

**(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)**

### **Multivariate models of analysis using aggregate-level data**

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo

identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. (**why is the N is Table 3-54,973?**)

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race (**explain**).
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting (**high income or low income, single, married?**),
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

## **Analysis of the predicted probability of voter turnout using the individual data**

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- 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 and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state 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. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- 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, while they were 6.1

percent less likely to vote where non-photo identification was the minimum requirement.

- 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 those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the “on the ground” experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

## **Public Policy and Administrative Considerations**

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies that will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## **Recommendations and Next Steps**

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.



- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue  
Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

DRAFT

## **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. HAVA Section 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 sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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 which are detailed in the attached report.

### **EAC Recommendations for further study and next steps**

EAC finds this initial review of States' voter identification requirements, state laws and litigation surrounding the implementation of voter identification requirements an important beginning step in its consideration of voter identification requirements. From this study and compilation of data EAC considers it advisable to engage in a longer-term, systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements.
- A review and study of how voter identification requirements are implemented and how these practices may vary from state law and statute.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

EAC believes that the findings from this initial study of voter identification requirements are helping inform additional studies it is conducting on a variety of related topics. The EAC study on first time voters who have registered to vote by mail and several forthcoming studies related to voter registration processes will provide necessary additional data to help inform discussions and debate related to ballot access and ballot security. The EAC also anticipates that follow-on study it does related to election crimes and various aspects of voting accessibility will also help inform and guide these ballot security and ballot access discussions.

Finally, EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout and voter registration figures;
- A research study which examines, in greater detail, the relationship between race and voter turnout, and race and methods for registering voters;
- Studies on the inter-relationship between various voter registration processes, voter turnout and number of election crimes reported or litigated;
- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes;
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.

Karen Lynn-Dyson/EAC/GOV  
01/18/2007 06:19 PM

To Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
cc  
bcc

Subject Short introduction to the Eagleton Voter ID report

History

This message has been replied to

Chair-

Attached please find a draft of a very brief introduction that could accompany the Eagleton report on voter identification requirements.

I am out of the office for the next several days. However, when I return I will provide you with a list of possible questions the Commissioners may want to pose during the March public meeting.

Regards-



New EAC Voter ID Report.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

027281

## EAC Statement on Future Study of Voter Identification Requirements

### Background

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From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

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# **EAC Statement on Future Study of Voter Identification Requirements**

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- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes.
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.



Karen Lynn-Dyson/EAC/GOV  
01/04/2007 04:27 PM

To Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
cc  
bcc

Subject Draft EAC report on Voter Identification

History

This message has been forwarded

Chair Davidson and Tom-

You may recall that during your last Commissioner's meeting you requested that a draft of the EAC Voter ID report be ready by January 5. Attached please find the first draft of such a report that I have prepared, based on the Eagleton Voter ID report and study.

There are several points in the document where I raise questions about the data or Eagleton's findings from their analysis. Certainly, before we would publish this report, we would need Eagleton to review it and to verify that we have accurately represented their findings and conclusions.

Hopefully, this is a first good step towards publishing something on voter identification. I look forward to your suggestions for next steps.



EAC Voter ID Report.doc

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

027285

## EAC Report on Voter Identification

### Executive Summary

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 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 sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University 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 to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also 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 found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## **Introduction**

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure broad access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

## **Methodology of the Study**

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook 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. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC

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survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## **Study Oversight and Methodological Review**

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

### **The Eagleton Institute of Politics Peer Review Group**

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### **The EAC Peer Review Group**

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninsky, Massachusetts Institute of Technology

## **Summary of the Research**

### **Maximum and Minimum Voter Identification Requirements**

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: 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. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the “maximum” requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data**) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

4027289

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit?????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### **Aggregate-level statistical analysis**

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r = -.30$ ,  $p$  less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r = -.20$ ,  $p = .16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. 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 was found when analyzing minimum ID requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

**(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)**

### **Multivariate models of analysis using aggregate-level data**

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo

identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. **( why is the N is Table 3 54,973?)**

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race **(explain)**.
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting **(high income or low income, single, married?)**,
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.



## **Analysis of the predicted probability of voter turnout using the individual data**

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- 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 and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state 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. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- 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, while they were 6.1

percent less likely to vote where non-photo identification was the minimum requirement.

- 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 those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the “on the ground” experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

## **Public Policy and Administrative Considerations**

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies the will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## **Recommendations and Next Steps**

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

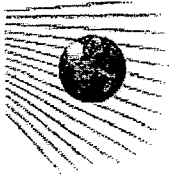
- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State


Appendix B: Court Decisions and Literature on Voter Identification and Related Issue Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

DRAFT



Paul DeGregorio/EAC/GOV  
01/11/2007 10:02 AM

To Donetta L. Davidson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV  
bcc  
Subject Re: Draft EAC report on Voter Identification 

As you can see, I did not get Karen's email on this (and neither did Julie or Gracia). You may want to have Tom share this with them.

-----  
Sent from my BlackBerry Wireless Handheld  
Donetta L. Davidson  
----- Original Message -----

**From:** Donetta L. Davidson  
**Sent:** 01/11/2007 09:32 AM  
**To:** Paul DeGregorio; Matthew Masterson  
**Subject:** Fw: Draft EAC report on Voter Identification

Please print for Paul to take on the trip  
----- Forwarded by Donetta L. Davidson/EAC/GOV on 01/11/2007 09:30 AM -----

Karen Lynn-Dyson/EAC/GOV

01/04/2007 04:27 PM

To Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
cc  
Subject Draft EAC report on Voter Identification

Chair Davidson and Tom-

You may recall that during your last Commissioner's meeting you requested that a draft of the EAC Voter ID report be ready by January 5. Attached please find the first draft of such a report that I have prepared, based on the Eagleton Voter ID report and study.

There are several points in the document where I raise questions about the data or Eagleton's findings from their analysis. Certainly, before we would publish this report, we would need Eagleton to review it and to verify that we have accurately represented their findings and conclusions.

Hopefully, this is a first good step towards publishing something on voter identification. I look forward to your suggestions for next steps.

[attachment "EAC Voter ID Report.doc" deleted by Paul DeGregorio/EAC/GOV]

K

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005

027297

tel:202-566-3123



Gavin S. Gilmour/EAC/GOV

10/20/2006 05:13 PM

To Edgardo Cortes/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Brian

cc

bcc

Subject Supreme Court Order on AZ issue

All,

FYI

Below please find a link to the supreme court's decision in the AZ matter. The decision overturns the Ninth Circuit's interlocutory injunction of proposition 200... the decision does not discuss the merits of the case. The court was very insistent on this point:

*"We underscore that we express no opinion here on the correct disposition, after full briefing and argument, of the appeals from the District Court's September 11 order or on the ultimate resolution of these cases. As we have noted, the facts in these cases are hotly contested, and "[n]o bright line separates permissible election-related regulation from unconstitutional infringements." Timmons v. Twin Cities Area New Party, 520 U. S. 351, 359 (1997). Given the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter identification rules."*

The message is ready to be sent with the following file or link attachments:  
Shortcut to: <http://www.supremecourtus.gov/opinions/06pdf/06A375.pdf>

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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.



- 06A375.url

027299

Per Curiam

**SUPREME COURT OF THE UNITED STATES**

HELEN PURCELL, MARICOPA COUNTY RECORDER,

ET AL.

06A375 (06-532)

*v.*

MARIA M. GONZALEZ ET AL.

ARIZONA ET AL.

06A379 (06-533)

*v.*

MARIA M. GONZALEZ ET AL.

ON APPLICATIONS FOR STAY

Nos. 06A375 (06-532) and 06A379 (06-533). Decided October 20, 2006

PER CURIAM.

The State of Arizona and county officials from four of its counties seek relief from an interlocutory injunction entered by a two-judge motions panel of the Court of Appeals for the Ninth Circuit. JUSTICE KENNEDY has referred the applicants' filings to the Court. We construe the filings of the State and the county officials as petitions for certiorari; we grant the petitions; and we vacate the order of the Court of Appeals.

I

In 2004, Arizona voters approved Proposition 200. The measure sought to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day.

The election procedures implemented to effect Proposition 200 do not necessarily result in the turning away of qualified, registered voters by election officials for lack of proper identification. A voter who arrives at the polls on election day without identification may cast a conditional provisional ballot. For that ballot to be counted, the voter

027300



Per Curiam

is allowed five business days to return to a designated site and present proper identification. In addition any voter who knows he or she cannot secure identification within five business days of the election has the option to vote before election day during the early voting period. The State has determined that, because there is adequate time during the early voting period to compare the voters' signatures on the ballot with their signatures on the registration rolls, voters need not present identification if voting early.

Arizona is a covered jurisdiction under §5 of the Voting Rights Act of 1965. So it was required to preclear any new voting "standard, practice, or procedure" with either the United States Attorney General or the District Court for the District of Columbia to ensure its new voting policy did "not have the purpose [or] effect of denying or abridging the right to vote on account of race or color," 42 U. S. C. §1973c. See *Georgia v. Ashcroft*, 539 U. S. 461, 461-462 (2003). On May 6, 2005, the United States Attorney General precleared the procedures Arizona adopted under Proposition 200.

In the District Court the plaintiffs in this action are residents of Arizona; Indian tribes; and various community organizations. In May 2006, these plaintiffs brought suit challenging Proposition 200's identification requirements. On September 11, 2006, the District Court denied their request for a preliminary injunction, but it did not at that time issue findings of fact or conclusions of law. These findings were important because resolution of legal questions in the Court of Appeals required evaluation of underlying factual issues.

The plaintiffs appealed the denial, and the Clerk of the Court of Appeals set a briefing schedule that concluded on November 21, two weeks after the upcoming November 7 election. The plaintiffs then requested an injunction pending appeal from the Court of Appeals. Pursuant to

Per Curiam

the Court of Appeals' rules, the request for an injunction was assigned to a two-judge motions/screening panel. See Rule 3-3 (CA9 2002). On October 5, after receiving lengthy written responses from the State and the county officials but without oral argument, the panel issued a four-sentence order enjoining Arizona from enforcing Proposition 200's provisions pending disposition, after full briefing, of the appeals of the denial of a preliminary injunction. The Court of Appeals offered no explanation or justification for its order. Four days later, the court denied a motion for reconsideration. The order denying the motion likewise gave no rationale for the court's decision.

Despite the time-sensitive nature of the proceedings and the pendency of a request for emergency relief in the Court of Appeals, the District Court did not issue its findings of fact and conclusions of law until October 12. It then concluded that "plaintiffs have shown a possibility of success on the merits of some of their arguments but the Court cannot say that at this stage they have shown a strong likelihood." Order in NO. CV 06-1268-PHX-ROS etc. (D. Ariz., Oct. 11, 2006), pp. 7-8, App. to Application for Stay of Injunction, Tab 5 (internal quotation marks and alterations omitted). The District Court then found the balance of the harms and the public interest counseled in favor of denying the injunction.

## II

"A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco County Democratic Central Comm.*, 489 U. S. 214, 231 (1989). Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

## Per Curiam

“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U. S. 533, 555 (1964). Countering the State’s compelling interest in preventing voter fraud is the plaintiffs’ strong interest in exercising the “fundamental political right” to vote. *Dunn v. Blumstein*, 405 U. S. 330, 336 (1972) (internal quotation marks omitted). Although the likely effects of Proposition 200 are much debated, the possibility that qualified voters might be turned away from the polls would caution any district judge to give careful consideration to the plaintiffs’ challenges.

Faced with an application to enjoin operation of voter identification procedures just weeks before an election, the Court of Appeals was required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures. Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase. So the Court of Appeals may have deemed this consideration to be grounds for prompt action. Furthermore, it might have given some weight to the possibility that the nonprevailing parties would want to seek en banc review. In the Ninth Circuit that procedure, involving voting by all active judges and an en banc hearing by a court of 15, can consume further valuable time. These considerations, however, cannot be controlling here. It was still necessary, as a procedural matter, for the Court of Appeals to give deference to the discretion of the District Court. We find no indication that it did so, and we conclude this was error.

Although at the time the Court of Appeals issued its order the District Court had not yet made factual findings

STEVENS, J., concurring

to which the Court of Appeals owed deference, see Fed. Rule Civ. Proc. 52(a), by failing to provide any factual findings or indeed any reasoning of its own the Court of Appeals left this Court in the position of evaluating the Court of Appeals' bare order in light of the District Court's ultimate findings. There has been no explanation given by the Court of Appeals showing the ruling and findings of the District Court to be incorrect. In view of the impending election, the necessity for clear guidance to the State of Arizona, and our conclusion regarding the Court of Appeals' issuance of the order we vacate the order of the Court of Appeals.

We underscore that we express no opinion here on the correct disposition, after full briefing and argument, of the appeals from the District Court's September 11 order or on the ultimate resolution of these cases. As we have noted, the facts in these cases are hotly contested, and "[n]o bright line separates permissible election-related regulation from unconstitutional infringements." *Timmons v. Twin Cities Area New Party*, 520 U. S. 351, 359 (1997). Given the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter identification rules.

The order of the Court of Appeals is vacated, and the cases are remanded for further proceedings consistent with this opinion. Pursuant to this Court's Rule 45.3, the Clerk is directed to issue the judgment in these cases forthwith.

*It is so ordered.*

JUSTICE STEVENS, concurring.

Allowing the election to proceed without enjoining the statutory provisions at issue will provide the courts with a better record on which to judge their constitutionality. At least two important factual issues remain largely unre-

STEVENS, J., concurring

solved: the scope of the disenfranchisement that the novel identification requirements will produce, and the prevalence and character of the fraudulent practices that allegedly justify those requirements. Given the importance of the constitutional issues, the Court wisely takes action that will enhance the likelihood that they will be resolved correctly on the basis of historical facts rather than speculation.

Karen Lynn-Dyson/EAC/GOV  
05/17/2006 09:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, twilkey@eac.gov  
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: Voter ID Report and Appendices

Commissioners-

Attached please find the Eagleton report on Voter Identification which has just been received.

I look forward to our discussion of this item at Thursday'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 05/17/2006 09:31 AM —



"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



Appendices517.doc VoterIDReport05170910.doc

027306

**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



		<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

		<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 (3)(a)</b> 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> <p>(1) A valid Georgia driver's license;</p> <p>(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;</p> <p>(3) A valid United States passport;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(7) A valid Georgia license to carry a pistol or revolver;</p> <p>(8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States;</p> <p>(9) A valid United States military identification card;</p> <p>(10) A certified copy of the elector's birth certificate;</p> <p>(11) A valid social security card;</p> <p>(12) Certified naturalization documentation;</p> <p>(13) A certified copy of court records showing adoption, name, or sex change;</p> <p>(14) A current utility bill, or a legible copy thereof, showing the name and address of the elector;</p> <p>(15) A bank statement, or a legible copy thereof, showing the name and address of the elector;</p> <p>(16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or</p> <p>(17) A government document, or a legible copy thereof, showing the name and address of the elector.</p> <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>	
<p>Indiana</p>	<p>Sign Name</p>		<p>West's Annotated Indiana Code § 3-11-8-25</p>
<p>Iowa</p>	<p>Sign Name</p>	<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>	<p>Iowa Code § 49.77</p>

		<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



		<p>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>.</p> <p>Effective: 1/1/2002</p>	
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>	Me. 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>	<p>Mass. Ann. Laws 54 § 76</p> <p>950 Mass. Code Regs. 52.03</p>
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</p>	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 <u>RSA 659:27-33</u> , 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

		<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 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>	Okla. Stat. Ann. tit. 26, § 7-114  Okla. Stat. Ann. tit. 26, § 7-117
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>	
Rhode Island	Give Name	<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 _____</p> <p>Election          Date _____</p> <p>I hereby certify that I am a registered and qualified elector in the above voting district of          City of _____</p> <p>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)</p> <p>Number Approved _____</p> <p>(Supervisor of Election)</p>	R.I. Gen. Laws § 17-19-24

		<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>	Wash. Rev. Code § 29A.44.201 & 29A.44.210
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>	W. Va. Code § 3-1-34 (a)

		<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. 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



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
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



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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
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

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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
-2 Log Likelihood	-8966.7	
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).
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- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
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- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
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- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
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- 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

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  - 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).
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  - Voter ID and Internet voting
  - Costs & Benefits of Internet voting
  - States using or examining Internet voting
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  - Discusses illegal ballots, fraudulent registration
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**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

**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



# 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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**For review by the EAC's Advisory Boards**

- 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 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.

- 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>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.

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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	<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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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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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

**REVISED FINAL D R A F T**  
**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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## MEMORANDUM

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**TO:** DOUG LEWIS, CHAIR  
EAC BOARD OF ADVISORS

**FROM:** COMMISSIONER RAY MARTINEZ

**SUBJECT:** CREATION OF STATEWIDE VOTER REGISTRATION LIST  
IMPLEMENTATION WORKING GROUP

**DATE:** MARCH 11, 2005

The Help America Vote Act of 2002 (“HAVA”) requires that each State implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the State level.<sup>1</sup> Moreover, the EAC is required by HAVA to adopt voluntary guidance to assist States in meeting this important requirement.<sup>2</sup>

Accordingly, to assist the EAC in developing voluntary guidance, the EAC requests your assistance in identifying up to four current members of the Board of Advisors who would be willing to serve on a Statewide Voter Registration List Implementation Working Group (“Working Group”). This Working Group will be comprised exclusively of state and local election officials drawn primarily from the current membership of the EAC’s Board of Advisors and Standards Board, in addition to representation from the Department of Justice.

The immediate objective of the Working Group will be to review the minimum requirements and essential elements to creating a “HAVA-compliant” statewide voter registration list, as well as related implementation and operational issues. On a more long-term basis, the EAC is negotiating an agreement with the National Academy of Sciences (“NAS”) in order to bring members of the Working Group together with information technology experts in databases, networking and security in order to discuss lingering technology issues related to the implementation and on-going use of statewide voter registration lists.

---

<sup>1</sup> Help America Vote Act, Pub.L. 107-252. Title II, § 303(a), 116 Stat. 1708 (codified at 42 U.S.C. § 15483 et seq.). An informal survey conducted by EAC staff last month found that States are in various stages of meeting this HAVA requirement.

<sup>2</sup> Help America Vote Act, Pub.L. 107-252. Title II, § 311(a), 116 Stat. 1715 (codified at 42 U.S.C. § 15501 et seq.).

***The Working Group will begin its work via a two-day meeting to be held in Washington, D.C., on March 30 – 31, 2005.*** Based on the results of this initial meeting, EAC staff will produce draft voluntary guidance, which, after an appropriate public comment and hearing process, will be considered for final adoption by the EAC.<sup>3</sup>

Please forward the names and contact information of the four members of the EAC Board of Advisors who wish to participate in the Working Group no later than Friday, March 17, 2005 to Karen Lynn-Dyson. Ms. Dyson can be reached via email at [klyndyson@eac.gov](mailto:klyndyson@eac.gov) and telephone at (202) 566-3100.

Thank you.

---

<sup>3</sup> EAC will implement a process for adoption of any final guidance which is in accordance with the public notice, comment and hearing provisions contained in HAVA, as well as a review period for the EAC's Board of Advisors and Standards Board.



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## MEMORANDUM

---

**TO:** MICHAEL SCIORTINO, CHAIR  
PEGGY NIGHSWONGER, VICE CHAIR  
EAC STANDARDS BOARD, EXECUTIVE BOARD

**FROM:** COMMISSIONER RAY MARTINEZ

**SUBJECT:** CREATION OF STATEWIDE VOTER REGISTRATION LIST  
IMPLEMENTATION WORKING GROUP

**DATE:** MARCH 11, 2005

The Help America Vote Act of 2002 (“HAVA”) requires that each State implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the State level.<sup>1</sup> Moreover, the EAC is required by HAVA to adopt voluntary guidance to assist States in meeting this important requirement.<sup>2</sup>

Accordingly, to assist the EAC in developing voluntary guidance, the EAC requests your assistance in identifying up to eight current members of the Standards Board who would be willing to serve on a Statewide Voter Registration List Implementation Working Group (“Working Group”). This Working Group will be comprised exclusively of state and local election officials drawn primarily from the current membership of the EAC’s Board of Advisors and Standards Board, in addition to representation from the Department of Justice.

The immediate objective of the Working Group will be to review the minimum requirements and essential elements to creating a “HAVA-compliant” statewide voter registration list, as well as related implementation and operational issues. On a more long-term basis, the EAC is negotiating an agreement with the National Academy of Sciences (“NAS”) in order to bring members of the Working Group together with information technology experts in databases, networking and security in order to discuss lingering technology issues related to the implementation and on-going use of statewide voter registration lists.

---

<sup>1</sup> Help America Vote Act, Pub.L. 107-252. Title II, § 303(a), 116 Stat. 1708 (codified at 42 U.S.C. § 15483 et seq.). An informal survey conducted by EAC staff last month found that States are in various stages of meeting this HAVA requirement.

<sup>2</sup> Help America Vote Act, Pub.L. 107-252. Title II, § 311(a), 116 Stat. 1715 (codified at 42 U.S.C. § 15501 et seq.).

***The Working Group will begin its work via a two-day meeting to be held in Washington, D.C., on March 30 – 31, 2005.*** Based on the results of this initial meeting, EAC staff will produce draft voluntary guidance, which, after an appropriate public comment and hearing process, will be considered for final adoption by the EAC.<sup>3</sup>

Please forward the names and contact information of the eight members of the EAC Standards Board who wish to participate in the Working Group no later than Friday, March 17, 2005 to Karen Lynn-Dyson. Ms. Dyson can be reached via email at [klyndyson@eac.gov](mailto:klyndyson@eac.gov) and telephone at (202) 566-3100.

Thank you.

---

<sup>3</sup> EAC will implement a process for adoption of any final guidance which is in accordance with the public notice, comment and hearing provisions contained in HAVA, as well as a review period for the EAC's Board of Advisors and Standards Board.

Juliet E. Hodgkins/EAC/GOV  
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject One more time

History:

 This message has been forwarded

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.



Voter ID edited 32107- with changed footnote.doc

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

027408

## **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**

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.
- 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.


1 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.

2 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.

3 The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

4 See Transcript of EAC Public Meeting, February 8, 2007, page 109.

Karen Lynn-Dyson/EAC/GOV  
03/21/2007 05:15 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: questions 

In fact, we did not ever meet with Eagleton on the research and statistical methodology they chose to employ with the Voter ID portion of the study.

Eagleton did brief the Commission twice but the focus on was on the provisional voting portion of the study. Certainly, in hindsight it would have been appropriate to have gotten such a briefing. I believe EAC thought it was sufficiently "covered" given the substantial involvement of a project working group that we had approved and with the use of an EAC peer review group.

Certainly, we'll be far more cautious the next time around.

Regards-

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

Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
03/21/2007 04:14 PM


To klynn-dyson@eac.gov  
cc  
Subject questions

Did the Commission ever meet with Eagleton and ask for an explanation of the methodology--would that have been appropriate?

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

027413

Caroline C. Hunter/EAC/GOV  
03/21/2007 05:26 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Bryan Whitener/EAC/GOV@EAC, ddavidson@eac.gov,  
ghillman@eac.gov, klynndyson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, twilkey@eac.gov  
bcc  
Subject Re: FOR YOUR APPROVAL: VoterID Draft Press Release 

Please see attached.



VoterID release Hunter edits.doc

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  
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  
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  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100

027414

[www.eac.gov](http://www.eac.gov)

Caroline C. Hunter/EAC/GOV  
03/21/2007 05:26 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Rosemary E.  
bcc  
Subject Re: One more time 

Looks good to me.

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

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC  
cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC  
Subject One more time

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.



Voter ID edited 32107- with changed footnote.doc

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

027415

Jeannie Layson/EAC/GOV  
03/22/2007 05:03 PM

To d davidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
jthompson@eac.gov, Elieen L. Kuala/EAC/GOV@EAC,  
sbanks@eac.gov, [REDACTED], [REDACTED].  
bcc

Subject Voter ID roll out strategy

Commissioners,  
Attached is a memo outlining my suggested strategy for releasing the results of your tally vote. It includes an overall message and Q&A. Please let me know if you have any questions about this information, and I look forward to your input. Thank you.



VoterIDRollOutProposal 03-22-07.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

027417

**Deliberative Process  
Privilege**



**March 22, 2007**

**MEMORANDUM**

**To:** Commissioners Davidson, Rodriguez, Hunter and Hillman  
**Fr:** Jeannie Layson  
**Cc:** Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener  
**RE:** Communications Strategy for Release of Voter ID Tally Vote Results

In anticipation of the release of the results of the tally vote and all of the information provided by the contractor, I suggest taking the following steps to effectively communicate your decision. Taking this approach will help us control how the information is distributed, how it is framed, and how to focus the discussion on the positive outcome of your decision.

The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

Please let me know if you have any questions about my proposal, and I look forward to your input.

027418



**PRELIMINARY ACTIVITIES**

Prior to the completion of the tally vote and the subsequent release of the results and the contractor's materials, I suggest taking the following steps:

1. Discuss EAC's decision with the contractors in advance of distributing the press release and discussions with reporters so that they have an opportunity to respond and also so they will be well informed and prepared to discuss the facts with reporters or others who will most likely contact them.
2. Prior to release of EAC's decision, reach out to key Hill staffers who have been following this issue, including those members who have requested this data in the past. This should include staffers for the House Appropriations Committee Subcommittee on Financial Services and General Government since the Committee requested this information a few weeks ago. It should be made clear to committee staffers that the tally vote is the culmination of a directive made by the EAC chair in Feb. that the agency move forward to complete this project. These staffers should also be included on our list of key stakeholders.
3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

**PUBLIC ROLL-OUT**

Once the above preliminary steps have been completed, EAC Communications will:

1. Post the press release and the related data on the website, with a link from the home page.
2. Prior to release of the tally vote decision and related data, call Richard Whitt of USA Today, Will Lester of AP, Chris Drew of the NYT, and Zach Goldfarb of the WaPo and let them know we are about to release the information. Offer interviews with the chair or other commissioners.
3. Send the press release (with a link to the research) to all recipients in the media database. This includes national dailies, as well as wire services such as the Associated Press.
4. Send the press release (with a link to the research) to all recipients in the stakeholder database. The database consists of election officials, advocates, and other interested parties, including representatives from organizations who have been critical of EAC, including VoteTrust USA and the People for the American Way.

**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 findings of the preliminary research, which focused exclusively on the 2004 general elections, 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**

We should be prepared to answer the following questions:

**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: 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. It 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 findings of the preliminary research, which focused exclusively on the 2004 general elections, were 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 2004.

### ***Bridge/Transition Phrases***

- What's really important here...
- 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...



"Rosemary Rodriguez"

03/27/2007 02:20 PM

To jlayson@eac.gov, ddaavidson@eac.gov, chunter@eac.gov,  
ghillman@eac.gov, rrodriguez@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
jthompson@eac.gov, bwhitener@eac.gov, ekuala@eac.gov,  
[REDACTED], sbanks@eac.gov,  
bcc

Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

I think we should be prepared to answer a question that may go something like: *What are your specific objections/concerns with the methodologies utilized by Eagleton?*

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

From: "jlayson@eac.gov" <jlayson@eac.gov>

To: ddaavidson@eac.gov; [REDACTED]; chunter@eac.gov; ghillman@eac.gov

Cc: twilkey@eac.gov; klynndyson@eac.gov; jthompson@eac.gov; bwhitener@eac.gov;

ekuala@eac.gov; [REDACTED]; sbanks@eac.gov; bbenavides@eac.gov

Sent: Tuesday, March 27, 2007 2:02:01 PM

Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,

I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the \$500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

8:00? 8:25? 8:40? Find a flick in no time  
with the Yahoo! Search movie showtime shortcut.

027422

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.  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, jlayson@eac.gov  
bcc

Subject Comments on Eagleton's response

History:

This message has been replied to.

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 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.

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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


Juliet E. Hodgkins/EAC/GOV  
03/28/2007 09:55 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
bcc  
Subject Re: Comments on Eagleton's response 

I have not reviewed the various laws, but I believe that it would require that kind of review to answer your question accurately. My guess is that much like other election-related provisions, the language of the statute and the placement of the statute in the code or statutory scheme will dictate the answer to the question. Some may not even be written into statute. If you want me to, I can get someone to start working on that review.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
03/28/2007 06:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC  
Subject Re: Comments on Eagleton's response 

Julie, in your legal opinion, is stating one's name considered identification in the states where it is the threshold requirement?

Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 03/28/2007 06:19 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Jeannie Layson  
**Subject:** Comments on Eagleton's response

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Attorney-Client  
Privilege

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

027426

Jeannie Layson/EAC/GOV  
03/30/2007 01:15 PM

To Caroline C. Hunter/EAC/GOV@EAC, Rosemary E.  
Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: press release

So far, so good trying to avoid the showdown w/Eagleton.

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 03/30/2007 01:12 PM -----



"Tim Vercellotti"

03/30/2007 01:08 PM

Please respond to  
tim.vercellotti@eac.gov

To jlayson@eac.gov  
cc tim.vercellotti@eac.gov, John Weingar  
Subject Re: press release

Jeannie:

Thanks very much for the update. I really appreciate it. I also had a conversation with NPR. One of the points I made was that it is terrific that the EAC plans to devote additional resources to studying the topic.

Tim

--

Tim Vercellotti, Ph.D.  
Assistant Research Professor  
Assistant Director, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901

> Commissioner Rodriguez did an interview with NPR, and she talked about the  
> need to look at more than one election. Reporter asked if EAC rejected  
> your research, and she said no, that what the commission did was conclude  
> that we needed to study this issue in even more depth.

> Also, I sent this info to Wendy Weiser at the Brennan Center, as they have  
> shown a lot of interest in its progress.

> I will keep you updated. Also, I've attached the PDF if you want to post  
> it on your website. (I didn't know if you had already had everything  
> compiled into one file.)

> Jeannie Layson

027427

> U.S. Election Assistance Commission  
> 1225 New York Ave., NW  
> Suite 1100  
> Washington, DC 20005  
> Phone: 202-566-3100  
> www.eac.gov

> "Tim Vercellotti" <[REDACTED]>  
> 03/30/2007 12:34 PM  
> Please respond to

> [REDACTED]  
> To  
> jlayson@eac.gov  
> cc

> [REDACTED] john.weingart [REDACTED]  
> Subject  
> Re: press release

> Jeannie:

> OK. Everyone worked very hard on this project, and I wanted to make sure  
> everyone gets recognition for their efforts.

> Tim

> --  
> Tim Vercellotti, Ph.D.  
> Assistant Research Professor  
> Assistant Director, Eagleton Center for Public Interest Polling  
> Eagleton Institute of Politics  
> Rutgers, The State University of New Jersey  
> 101 [REDACTED]  
> New Brunswick, NJ 08901  
> Phone: [REDACTED]  
> Fax: [REDACTED]

>> Tim,  
>> Sorry... spoke too soon. We're only listing you guys in the press  
>> release  
>> b/c our contract was with you. And we don't want to confuse people when  
>> we  
>> refer to the "contractor." However, we are posting the entire report,  
>> and  
>> Ohio State is featured prominently on the cover.

>>  
>> Jeannie Layson  
>> U.S. Election Assistance Commission  
>> 1225 New York Ave., NW  
>> Suite 1100  
>> Washington, DC 20005  
>> Phone: 202-566-3100  
>> www.eac.gov

>>

027428

>>  
>>  
>> "Tim Vercellotti" <tim.ve@rutgers.edu>  
>> 03/30/2007 12:13 PM  
>> Please respond to  
>> tim.vercellotti@rutgers.edu  
>>  
>>  
>> To  
>> jlayson@eac.gov  
>> cc  
>> john.weingart@rutgers.edu  
>> Subject  
>> Re: press release  
>>  
>>  
>>  
>>  
>>  
>> Jeannie:  
>>  
>> Thanks for the heads up. I am curious as to why the release does not  
>> mention the other half of the research team, the Moritz College of Law  
> at  
>> The Ohio State University. Their legal research on the classification of  
>> ID requirements provided crucial infrastructure for the statistical  
>> analysis.  
>>  
>> Tim  
>> --  
>> Tim Vercellotti, Ph.D.  
>> Assistant Research Professor  
>> Assistant Director, Eagleton Center for Public Interest Polling  
>> Eagleton Institute of Politics  
>> Rutgers, The State University of New Jersey  
>> [REDACTED]  
>> New Brunswick, NJ 08901  
>> Phone: [REDACTED]  
>> Fax: [REDACTED]  
>>  
>>> 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. 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  
>>>  
>>  
>>  
>>  
>>  
>>  
>

Jeannie Layson/EAC/GOV  
03/30/2007 02:04 PM

To ddavidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klyndyson@eac.gov,  
jthompson@eac.gov

bcc

Subject Voter ID update

Commissioners,

The press release, the statement, and the draft report has been posted on our site. The press release is being distributed, and is on the way to all of you and the entire EAC staff. The following activities have occurred:

1. Press release was sent in advance to Eagleton.
2. I called Wendy Weiser of the Brennan Center and sent her the info.
3. I called and sent the info to Ray M. and Paul D.
4. I sent the info to Tom Hicks and Adam A.
5. Tom called Dan Tokaji, Dan Oak, and Rep. Hinchey's office.
6. Karen gave the three EAC experts a heads up.
7. Comm. Rodriguez was interviewed by NPR (the only outlet that showed any interest), as was Eagleton. Eagleton told NPR they are glad we are expanding the scope. Interview will run on affiliates today at approximately 5:44 pm EST.
8. I offered interviews to USA Today, WaPo, NYT, and AP but none were interested.
9. I have kept Eagleton apprised of our activities.

I'll continue to keep you apprised as the day goes on, and please let me know if there's anyone else you'd like me to contact.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

027430

Bryan Whitener/EAC/GOV  
03/30/2007 02:40 PM

To  
cc  
bcc Rosemary E. Rodriguez/EAC/GOV  
Subject EAC to Launch Comprehensive Study of Voter ID Laws,  
3-30-07

History: This message has been forwarded

## **For Immediate Release**

March 30, 2007

### Contact:

Jeannie Layson  
Bryan Whitener  
(202) 566-3100

## **EAC to Launch Comprehensive Study of Voter ID Laws**

**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:

027431

- \* 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\* 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\* and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.\*

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.

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.\* 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.

\*1 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.

\*2 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.

\* 3 The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

\* 4 See Transcript of EAC Public Meeting, February 8, 2007, page 109.

### **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.

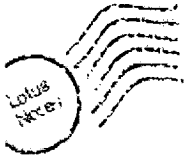
\* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

\* 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.

\* 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.

###

027434



Gracia Hillman/EAC/GOV  
03/30/2007 06:26 PM

To Jeannie Layson/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject Re: Voter ID update 

Too early yet.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 03/30/2007 04:19 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins  
**Subject:** Voter ID update

Commissioners,  
Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

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)

027435

Jeannie Layson/EAC/GOV  
03/30/2007 08:33 PM

To "Donetta Davidson" <ddavidson@eac.gov>, "Gracia Hillman" <ghillman@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C.  
cc "Tom Wilkey" <twilkey@eac.gov>, "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Julie Thompson" <jthompson@eac.gov>

bcc

Subject Hinchey statement

History:  This message has been replied to and forwarded.

Hinchey Statement on U.S. Election Assistance Commission's

Release of Report on Voter Identification Issues

Washington, DC - Congressman Maurice Hinchey (D-NY) today released the following report in response to the U.S. Election Assistance Commission's (EAC) release of a report on voter identification issues that was submitted to them by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, and Ohio State University's Moritz College of Law. Hinchey directly requested the release of the report when EAC Chairwoman Donetta Davidson appeared earlier this month before the House Appropriations Subcommittee on Financial Services, of which the congressman is a member. Davidson told Hinchey at the hearing that she would provide the subcommittee with the report that is being released to the public today. Hinchey also requested the release of a separate report on voter fraud and intimidation. The Help America Vote Act (HAVA) requires the EAC to conduct and make available to the public studies regarding certain voting issues.

"I am very pleased that following Chairwoman Davidson's appearances before Congress the EAC decided to do the right thing and make public the Eagleton Institute of Politics study on voter identification issues. I hope that this decision signals a new day of transparency and sets a precedent for all future and previous studies and reports submitted to the EAC.

"When Chairwoman Davidson came before our subcommittee a few weeks ago, I also requested that the EAC make public another report about voter fraud and voter intimidation submitted to them by two outside consultants. It is my hope they will release this report to the public as well. The EAC has the responsibility to keep the public informed on any findings it has with regards to voter fraud, intimidation, and any other electoral issues.

"As we work to increase voter turnout and make our democracy function more effectively, it is imperative that potential voters are assured that they will be able to cast their votes fairly and in an environment free of intimidation. To achieve that goal, the EAC must be open with the information it receives in order to help identify voting problems and make recommendations on fixing them."

-----  
Sent from my BlackBerry Wireless Handheld

027436



Gracia Hillman/EAC/GOV  
04/19/2007 10:18 PM

To rrodriguez@eac.gov  
cc  
bcc  
Subject Fw: The Side By Side Project

History: This message has been replied to.

My system picked up your personal email address. Strange but true.

-----Forwarded by Gracia Hillman/EAC/GOV on 04/20/2007 10:16PM -----

To: rosemaryrod2003@yahoo.com  
From: Gracia Hillman/EAC/GOV  
Date: 04/19/2007 10:15PM  
Subject: The Side By Side Project

I have made the following suggestion to Tom:

Tom:

I am not so sure having an election official do the side by side is the best way to go. This issue is not about election officials. It is about DC rat hole politics and the presentation of research "data."

I offer the following names for consideration.

Bruce Cain and Raymond Wolfinger. Both teach at Berkeley although Wolfinger retired last spring. Both are considered at the top of the poli sci hierarchy, in terms of competence and status. I am told they are very good scholars who do not have a reputation for partisanship, although they have been involved in "the real world of politics."

Here are their Web sites:

~~http://www.berkeley.edu/~cain/~~  
~~http://www.berkeley.edu/~wolfinger/~~

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 08:11 AM

To: Gracia Hillman/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: The Side By Side Project

I am going to have to learn the DC vernacular--"rat hole" is a new term for me. I think Bruce is pretty identified w Dems so I think there may be push back on him--I think that's why Tom was going for an EO, to get one of the non-partisan folks involved. We should get the best person for our audience--so I think we should identify our audience and I think that is the Congress.

---

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

**From:** Gracia Hillman  
**Sent:** 04/19/2007 10:18 PM EDT  
**To:** Rosemary Rodriguez  
**Subject:** Fw: The Side By Side Project

My system picked up your personal email address. Strange but true.

-----Forwarded by Gracia Hillman/EAC/GOV on 04/20/2007 10:16PM -----

To: [REDACTED]  
From: Gracia Hillman/EAC/GOV  
Date: 04/19/2007 10:15PM  
Subject: The Side By Side Project

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Here are their Web sites:

[REDACTED]  
[REDACTED]

Rosemary E.  
Rodriguez/EAC/GOV  
04/20/2007 08:13 AM

To Gracia Hillman/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
cc Donetta L. Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
Thomas R. Wilkey/EAC/GOV@EAC  
bcc "Staci Fabre" <[REDACTED]>  
Subject Re: Letter to Bd of Adv w/edits 

I believe that we should respond to Chair Serrano's request that we release the report and release it, post-haste.

---

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

**From:** Gracia Hillman  
**Sent:** 04/19/2007 05:55 PM EDT  
**To:** Juliet Hodgkins  
**Cc:** Donetta Davidson; Caroline Hunter; Rosemary Rodriguez; Jeannie Layson; Thomas Wilkey  
**Subject:** Letter to Bd of Adv w/edits

So, do we now wait until a final decision is made about the release of the report, in which we might say, "EAC has voted to release the report with a side by side...etc."?

At any rate, I urge that if we do decide to release the report, that we still send this out now and then send the side-by-side when it is ready.

027439

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

027440



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.

Juliet E. Hodgkins/EAC/GOV  
04/30/2007 05:39 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Rosemary E. Rodriguez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C.

cc

bcc

Subject Requested background on Florida Request

Commissioners,

Earlier, I was asked to provide information relative to the history of how the Florida request came to the Commission and to provide any additional information that Florida has provided since that initial request. First, here is the time line of how the request came to us:

3/12/2007 - Bob West of the Florida Legislature requested information from Edgardo regarding whether HAVA funds could be used to replace DREs with touch screen systems.  
3/13/2007 - Amy Tuck of the Florida Secretary of State's office sent the same request  
3/14/2007 - Edgardo, Julie and Jeannie had a conversation with Amy Tuck via telephone to discuss the question that she posed; she followed that up with an email.  
4/5/2007 - Amy Tuck requested a written opinion as to the questions that had been asked previously in the telephone conversation and via subsequent emails  
4/16/2007 - Julie, Tom and Edgardo had a telephone conference with the FL Secretary of State (Kurt Browning) and a host of others from his office and from the State Legislature  
4/16/2007 - FL Secretary of State's office sent via email additional information requested during the conference call with the Secretary of State and others  
4/25/2007 - FL Secretary of State provided additional information regarding the \$5,000,000 grant program for the purchase of ballot on demand systems  
4/30/2007 - FL Secretary of State provided additional information on what systems are replaced by the \$5,000,000 grant program.

Attached below are documents 1) containing emails between EAC (Edgardo) and FL; 2) containing information provided by the FL Secretary of State's office on 4/16/2007 -- 2 documents; and 3) containing information provided by the FL Secretary of State's office on 4/25/2007.



E-mails from FL on request.pdf



FL HAVA Funding.pdf



Email from FL to Tom.doc



FL Letter.pdf

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

027648



"West, Bob"

04/02/2007 03:26 PM

To ecortes@eac.gov

cc

bcc

Subject RE: Response: Using HAVA funds to replace voting equipment

History This message has been replied to and forwarded.

Edgardo,

What are the restrictions on the use of the interest from the HAVA money and were do I find those rules. Can we use the interest to replace Florida DRE's with optical scan?

Thanks

Bob West - Legislative Analyst  
Florida House of Representatives  
Ethics and Elections  
402 HOB  
Tallahassee, FL 32399-1300

---

**From:** ecortes@eac.gov [mailto:ecortes@eac.gov]  
**Sent:** Monday, March 12, 2007 2:41 PM  
**To:** West, Bob  
**Subject:** Response: Using HAVA funds to replace voting equipment  
**Importance:** High

Mr. West,

You requested information this morning via telephone on whether Florida could use its remaining HAVA §251 funds to replace DREs previously purchased with HAVA funds with optical scan voting systems. Since you have requested an answer by this afternoon to assist in your legislative session and a specific answer to your question would require us to collect additional information and would take additional time, I am including a response sent to Washington State regarding a similar question. Please review this and see if it is sufficient for what you need. I have also included an explanation of acceptable uses of HAVA funds as well as other federal rules and regulations that are applicable to the use of HAVA funds. I have highlighted the sections most closely related to your request. Please let me know if you have any additional questions or if you need further clarification. Thank you.

**Sources and Uses of HAVA Funds**

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting, to improve voting technology, to develop and implement a statewide voter

027683

registration database, to provide information to voters, and to verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds.

The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA.

Section 251 funds can be used to implement any of the Title III requirements, including purchasing compliant voting systems, implementing provisional voting, providing information to voters in the polling place, developing and implementing a statewide voter registration list, and identifying voters. In addition, states and local governments can use HAVA funds to improve the administration of elections for Federal office when one of two conditions is met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose.

The uses of Section 251 funds (and Section 101 funds, when used to meet the requirements of Title III) must be accounted for in the state's plan as originally submitted or later amended. Any material change in the use of 251 funds (and Section 101 funds as specified above) from the approved state plan will require the state to revise its plan and submit the revisions to the EAC for publication and approval.

**Costs must be Allowable, Allocable and Reasonable**

In addition to the restrictions on the uses of funds imposed by HAVA, when these funds were distributed by either the General Services Administration (GSA) or the EAC, those funds were

## HAVA FUNDING

- May, 2001 Florida Legislature passes the Florida Election Reform Act that required replacement of punchcard or lever voting systems
- August, 2001 Contracts sent to counties for partial payment from state general revenue fund to replace or reimburse punchcard and lever voting systems  
Payment formula: \$3750 for large counties, \$7500 for smaller counties (per polling place as reported by counties)  
Total to counties from the state: \$12,046,875.00  
*(See Attachment A for county by county breakdown)*  
*Please note: County contracts to replace punchcard and lever voting systems were well in excess of this state funded formula.*
- July, 2002 Contracts sent to counties for partial payment from state general revenue fund to replace or reimburse punchcard and lever voting systems  
Payment formula: \$3750 for large counties, \$7500 for smaller counties (per polling place as reported by counties)  
Total to counties from the state: \$12,046,875.00  
*(See Attachment B for county by county breakdown)*  
*Please note: County contracts to replace punchcard and lever voting systems were well in excess of this state funded formula.*
- Total state payout for the replacement of punchcard or lever voting systems: \$24,093,750.00
- October, 2002 HAVA is passed by Congress
- April, 2003 Receipt of HAVA Funding  
Initial Payment  
101: \$5,000,000.00  
102: \$0  
251: \$0
- June, 2003 Receipt of HAVA Funding  
Balance of Section 101  
102 Funds  
101: \$9,447,580.00  
102: \$ 11,581,377.00
- July, 2003 Distribution of HAVA funding to the state for section 102 purchases (replacement of punchcard or lever voting systems)  
Total: \$11,500,000.00

Total HAVA funding from section 102 to replace punchcard or lever voting systems: \$11,500,000.00

June, 2004

Receipt of HAVA Funding  
Year 2003 Title II Funding  
251: \$47,416,833.00

September, 2004

Distribution of HAVA funding to counties for compliance with Section 251 (ADA) for accessible machines at polling places  
Grant award to 51 counties to get in to compliance  
Total: \$11,600,000.00 from 251 funding  
(See Attachment C for county by county breakdown)

December, 2004

Receipt of HAVA Funding  
Year 2004 Title II Funding  
251: \$85,085,258.00

May, 2006

Final distribution of HAVA funding to counties for compliance with Section 251 (ADA) for accessible machines at polling places  
Grant award to 16 counties that were already in compliance  
Total: \$13,469,378.54 from 251 funding  
(See Attachment D for county by county breakdown)

Total distribution for Section 301 purposes for accessible voting systems from Section 251 funding: \$25,069,378.54

April, 2007

Discussion regarding payment of Governor's proposed legislation with HAVA funding

Governor's proposal:

1. Optical scan in all precincts and early voting sites  
Estimated cost to state: \$22,861,850.00
2. One VVPAT at each precinct for ADA purposes  
Estimated cost to state: \$7,511,360.00
3. One VVPAT at each early voting site for ADA purposes  
Estimated cost to state: \$304,850.00
4. Ballot on demand grant to counties that were 100% touchscreen at early voting sites in 2006 general election (to be funded per voter)  
Grant amount: \$5,000,000.00

Total: \$35,678,060.00\*

\*Please note that counties will have additional costs.

027467

**FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
VOTING SYSTEMS AGREEMENTS  
FY 2001-02**

<b>FY 2001-02 Voting Systems Agreements</b>	
<b>County</b>	<b>Amount</b>
Alachua	99,375
Baker	30,000
Bay	88,125
Bradford	75,000
Brevard	331,875
Broward	1,158,750
Calhoun	48,750
Charlotte	118,125
Citrus	65,625
Clay	95,625
Collier	180,000
Columbia	116,250
DeSoto	56,250
Dixie	45,000
Duval	502,500
Escambia	202,500
Flagler	101,250
Franklin	30,000
Gadsden	60,000
Gilchrist	45,000
Glades	48,750
Gulf	52,500
Hamilton	30,000
Hardee	45,000
Hendry	82,500
Hernando	95,625
Highlands	45,000
Hillsborough	600,000
Holmes	60,000
Indian River	71,250
Jackson	101,250
Jefferson	48,750
Lafayette	18,750
Lake	161,250
Lee	281,250
Leon	178,125
Levy	78,750
Liberty	30,000
Madison	41,250
Manatee	253,125

**FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
VOTING SYSTEMS AGREEMENTS  
FY 2001-02**

<b>FY 2001-02 Voting Systems Agreements</b>	
<b>County</b>	<b>Amount</b>
Marion	180,000
Martin	75,000
Miami-Dade	1,156,875
Monroe	61,875
Nassau	78,750
Okaloosa	90,000
Okeechobee	67,500
Orange	433,125
Osceola	123,750
Palm Beach	995,625
Pasco	247,500
Pinellas	646,875
Polk	305,625
Putnam	187,500
St. Johns	106,875
St. Lucie	146,250
Santa Rosa	67,500
Sarasota	266,250
Seminole	249,375
Sumter	90,000
Suwannee	60,000
Taylor	52,500
Union	41,250
Volusia	322,500
Wakulla	45,000
Walton	120,000
Washington	56,250

**TOTAL** **12,046,875**



**FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
VOTING SYSTEMS AGREEMENTS  
FY 2002-03**

<b>Voting Systems Agreements</b>	
<b>County</b>	<b>Amount</b>
Alachua	99,375
Baker	30,000
Bay	88,125
Bradford	75,000
Brevard	331,875
Broward	1,158,750
Calhoun	48,750
Charlotte	118,125
Citrus	65,625
Clay	95,625
Collier	180,000
Columbia	116,250
DeSoto	56,250
Dixie	45,000
Duval	502,500
Escambia	202,500
Flagler	101,250
Franklin	30,000
Gadsden	60,000
Gilchrist	45,000
Glades	48,750
Gulf	52,500
Hamilton	30,000
Hardee	45,000
Hendry	82,500
Hernando	95,625
Highlands	45,000
Hillsborough	600,000
Holmes	60,000
Indian River	71,250
Jackson	101,250
Jefferson	48,750
Lafayette	18,750
Lake	161,250
Lee	281,250
Leon	178,125
Levy	78,750
Liberty	30,000
Madison	41,250
Manatee	253,125

**FLORIDA DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
VOTING SYSTEMS AGREEMENTS  
FY 2002-03**

<b>Voting Systems Agreements</b>	
<b>County</b>	<b>Amount</b>
Marion	180,000
Martin	75,000
Miami-Dade	1,156,875
Monroe	61,875
Nassau	78,750
Okaloosa	90,000
Okeechobee	67,500
Orange	433,125
Osceola	123,750
Palm Beach	995,625
Pasco	247,500
Pinellas	646,875
Polk	305,625
Putnam	187,500
St. Johns	106,875
St. Lucie	146,250
Santa Rosa	67,500
Sarasota	266,250
Seminole	249,375
Sumter	90,000
Suwannee	60,000
Taylor	52,500
Union	41,250
Volusia	322,500
Wakulla	45,000
Walton	120,000
Washington	56,250

**TOTAL** **12,046,875**

**DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
VOTING SYSTEMS ASSISTANCE GRANT  
FY 2004-05**

COUNTY	POLLING PLACES *	EXISTING SYSTEMS - COMPLIANT	REQUIRED	FUNDING PER COUNTY
Alachua	70	0	70	\$ 316,076.29
Baker	10	0	10	45,153.76
Bay	55	2	53	239,314.91
Bradford	17	2	15	67,730.63
Brevard	139	0	139	627,637.21
Calhoun	12	0	12	54,184.51
Citrus	41	0	41	185,130.40
Clay	59	0	59	266,407.16
Columbia	24	0	24	108,369.02
DeSoto	15	0	15	67,730.63
Dixie	11	0	11	49,669.13
Duval	266	3	263	1,187,543.79
Escambia	85	0	85	383,806.93
Flagler	32	0	32	144,492.02
Franklin	8	1	7	31,607.63
Gadsden	25	0	25	112,884.39
Gilchrist	10	0	10	45,153.76
Glades	12	0	12	54,184.51
Gulf	13	0	13	58,699.88
Hamilton	9	0	9	40,638.38
Hardee	12	0	12	54,184.51
Hendry	22	2	20	90,307.51
Hernando	52	0	52	234,799.53
Holmes	16	0	16	72,246.01
Jackson	27	2	25	112,884.39
Jefferson	15	0	15	67,730.63
Lafayette	6	0	6	27,092.25
Leon	125	0	125	564,421.95
Levy	14	0	14	63,215.26
Liberty	8	1	7	31,607.63
Madison	11	0	11	49,669.13
Manatee	136	0	136	614,091.09
Marion	110	0	110	496,691.32
Monroe	33	0	33	149,007.40
Okaloosa	52	0	52	234,799.53
Okeechobee	17	0	17	76,761.39
Orange	253	0	253	1,142,390.04
Osceola	67	0	67	302,530.17
Polk	148	0	148	668,275.59
Putnam	33	1	32	144,492.02
Santa Rosa	40	0	40	180,615.03
Seminole	99	0	99	447,022.19
St. Johns	57	0	57	257,376.41
St. Lucie	59	0	59	266,407.16
Suwannee	16	0	16	72,246.01

**DEPARTMENT OF STATE  
DIVISION OF ELECTIONS  
VOTING SYSTEMS ASSISTANCE GRANT  
FY 2004-05**

COUNTY	POLLING PLACES *	EXISTING SYSTEMS - COMPLIANT	REQUIRED	FUNDING PER COUNTY
Taylor	14	0	14	63,215.26
Union	11	0	11	49,669.13
Volusia	155	0	155	699,883.22
Wakulla	12	0	12	54,184.51
Walton	32	0	32	144,492.02
Washington	18	0	18	81,276.76
<b>TOTAL</b>	<b>2,583</b>	<b>14</b>	<b>2,569</b>	<b>\$ 11,600,000.00</b>

**FY 2004-05 Appropriation for Voting Systems Assistance** **11,600,000**

**Average cost per machine** **4,515.38**

From funds in Specific Appropriation 28711, \$11,600,000 shall be distributed by the Department of State to county supervisors of elections for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for disability requirements which is accessible to persons with disabilities to ensure that each county has one accessible voting system for each polling place. The funds are to be distributed according to the number of machines that are accessible for persons with disabilities that are needed in order for each county to have one per polling place. No supervisor of elections shall receive any funds until the county supervisor of elections certifies to the Department of State: 1) the number of precincts in the county; 2) the number of polling places in the county; 3) the number of voting machines the county has that meet the disability requirement; 4) the county's plan for purchasing the DRE's; and 5) the date that the county anticipates being in compliance.

The Department of State will determine the number of DRE's needed in each county based on the certifications provided by the supervisors of elections. Any county that receives funds from Specific Appropriation 28711 that is not in compliance with the accessibility requirements in Section 301(a)(3) Title III of the Help America Vote Act by January 1, 2006, shall be required to return those funds to the State.

\*Polling places on Election Day

## Help America Vote Act (HAVA) Voting Systems Assistance Grants

### Reimbursement to counties with polling places that were unfunded in FY 2004-05 due to existing DRE equipment FY 05-06

Bay	\$9,030.76
Bradford	\$9,030.76
Duval	\$13,546.14
Franklin	\$4,515.38
Hendry	\$9,030.76
Jackson	\$9,030.76
Liberty	\$4,515.38
Putnam	<u>\$4,515.38</u>
<b>TOTAL</b>	<b><u>\$63,215.32</u></b>

### Reimbursement to Counties With at least one DRE per polling place prior to 7-1-2004 FY 05-06

Broward	\$2,298,328.42
Charlotte	\$293,499.70
Collier	\$370,261.16
Highlands	\$112,884.50
Hillsborough	\$1,490,075.40
Indian River	\$216,738.24
Lake	\$451,538.00
Lee	\$731,491.56
Martin	\$221,253.62
Miami-Dade	\$2,524,097.42
Nassau	\$99,338.36
Palm Beach	\$1,896,459.60
Pasco	\$645,699.34
Pinellas	\$1,309,460.20
Sarasota	\$605,060.92
Sumter	<u>\$139,976.78</u>
<b>TOTAL</b>	<b><u>\$13,406,163.22</u></b>
<b>GRAND TOTAL</b>	<b><u><u>\$13,469,378.54</u></u></b>

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

----- Forwarded by Thomas R. Wilkey/EAC/GOV on 04/16/2007 02:24 PM -----

"Tuck, Amy K."

<AKTuck@dos.state.fl.us>

twilkey@eac.gov

To

04/16/2007 02:23 PM

cc

Subject

RE: Florida HAVA Funding

Tom,

Here are the counties:

100% Touch Screen

Charlotte  
Collier  
Hillsborough  
Indian River  
Lake  
Lee  
Martin  
Nassau  
Palm Beach  
Pasco  
Pinellas  
Broward  
Miami-Dade  
Sarasota  
Sumter

Let me know if you need anything else.

**Amy K. Tuck, Esq.**  
Director, Division of Elections  
Florida Department of State  
The R.A. Gray Building  
500 South Bronough Street, Room 316  
Tallahassee, Florida 32399

027455

~~REDACTED~~

**From:** Woodward, Amy  
**Sent:** Monday, April 16, 2007 2:11 PM  
**To:** Kennedy, Jennifer L.  
**Cc:** Tuck, Amy K.  
**Subject:** FW: Florida HAVA Funding

**From:** twilkey@eac.gov [mailto:twilkey@eac.gov]  
**Sent:** Monday, April 16, 2007 2:10 PM  
**To:** Woodward, Amy  
**Subject:** Re: Florida HAVA Funding

Amy;  
Thanks for the information.  
We need you to identify which 15 counties have DRE which need to be replaced.  
Thanks  
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

"Woodward, Amy" <AWoodward@dos.state.fl.us>

04/16/2007 01:18 PM

twilkey@eac.gov

To

"Browning, Kurt S." <KSBrowning@dos.state.fl.us>

cc

Florida HAVA Funding

Subject

*Attached is the information from the conference call this morning.*

*Thank you,*

*Amy Woodward  
Executive Assistant  
Office of the Secretary*

027657



**FLORIDA DEPARTMENT OF STATE****CHARLIE CRIST**  
Governor**KURT S. BROWNING**  
Secretary of State

Thomas R. Wilkey  
Executive Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, D.C. 20005

Via Facsimile

April 25, 2007

Dear Mr. Wilkey,

This letter is in response to your request dated April 25, 2007 regarding additional information. If we understand your questions correctly, the following are our responses.

The proposed \$5 million cost for ballot on demand is separate from the proposed \$22.8 million cost to provide for optical scan voting systems to replace touchscreen systems at precinct and early voting sites. The optical scan voting systems at early voting sites will be used in conjunction with ballot on demand.

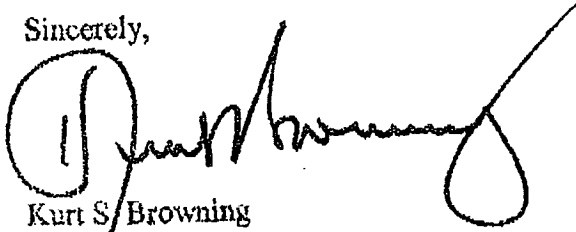
The ballot on demand system, used in conjunction with optical scan at early voting sites, is replacing touchscreen voting systems that were "partially" financed with HAVA funds. Please note that when Florida counties originally replaced punchcard and lever voting systems with touchscreen voting systems, the counties funded a majority of the cost. Florida reimbursed itself with HAVA Section 102 funds but that only constituted a small portion of the overall cost for the voting systems. For further explanation, please see the attached timeline regarding HAVA funding in Florida.

In response to your third question, I would like to restate it to be sure that I am answering the proper question. I believe your question to be: If Florida is replacing touchscreen (HAVA funded) voting systems with optical scan systems, are we also adding ballot on demand to this scenario? The answer to this question as stated is yes as it pertains to early voting sites only. The proposal is to provide optical scan voting systems that, for some early voting sites, would work in conjunction with ballot on demand. The larger counties in Florida do not have the capacity at early voting sites to provide ballot management for the voluminous ballot styles that would be required to be provided at early voting sites. Therefore, ballot on demand alleviates this problem.

As a final note, I would like to reiterate that Florida is proposing to leave one touchscreen voting system, upgraded with a voter verifiable paper audit record, in each precinct and early voting site.

If you have any further questions or need any further information, please do not hesitate to contact me. I look forward to seeing you in Washington, D.C. next week.

Sincerely,



Kurt S. Browning  
Secretary of State

KSB/at

**HAVA FUNDING**

- May, 2001 Florida Legislature passes the Florida Election Reform Act that required replacement of punchcard or lever voting systems
  
- August, 2001 Contracts sent to counties for partial payment from state general revenue fund to replace or reimburse punchcard and lever voting systems  
 Payment formula: \$3750 for large counties, \$7500 for smaller counties (per polling place as reported by counties)  
 Total to counties from the state: \$12,046,875.00  
*(See Attachment A for county by county breakdown)*  
*Please note: County contracts to replace punchcard and lever voting systems were well in excess of this state funded formula.*
  
- July, 2002 Contracts sent to counties for partial payment from state general revenue fund to replace or reimburse punchcard and lever voting systems  
 Payment formula: \$3750 for large counties, \$7500 for smaller counties (per polling place as reported by counties)  
 Total to counties from the state: \$12,046,875.00  
*(See Attachment B for county by county breakdown)*  
*Please note: County contracts to replace punchcard and lever voting systems were well in excess of this state funded formula.*

Total state payout for the replacement of punchcard or lever voting systems: \$24,093,750.00
  
- October, 2002 HAVA is passed by Congress
  
- April, 2003 Receipt of HAVA Funding  
 Initial Payment  
 101: \$5,000,000.00  
 102: \$0  
 251: \$0
  
- June, 2003 Receipt of HAVA Funding  
 Balance of Section 101  
 102 Funds  
 101: \$9,447,580.00  
 102: \$ 11,581,377.00
  
- July, 2003 Distribution of HAVA funding to the state for section 102 purchases (replacement of punchcard or lever voting systems)  
 Total: \$11, 500,000.00

Total HAVA funding from section 102 to replace punchcard or lever voting systems: \$11,500,000.00

June, 2004 Receipt of HAVA Funding  
Year 2003 Title II Funding  
251: \$47,416,833.00

September, 2004 Distribution of HAVA funding to counties for compliance with Section 251 (ADA) for accessible machines at polling places  
Grant award to 51 counties to get in to compliance  
Total: \$11,600,000.00 from 251 funding  
(See Attachment C for county by county breakdown)

December, 2004 Receipt of HAVA Funding  
Year 2004 Title II Funding  
251: \$85,085,258.00

May, 2006 Final distribution of HAVA funding to counties for compliance with Section 251 (ADA) for accessible machines at polling places  
Grant award to 16 counties that were already in compliance  
Total: \$13,469,378.54 from 251 funding  
(See Attachment D for county by county breakdown)

Total distribution for Section 301 purposes for accessible voting systems from Section 251 funding: \$25,069,378.54

April, 2007 Discussion regarding payment of Governor's proposed legislation with HAVA funding

Governor's proposal:

1. Optical scan in all precincts and early voting sites  
Estimated cost to state: \$22,861,850.00
2. One VVPAT at each precinct for ADA purposes  
Estimated cost to state: \$7,511,360.00
3. One VVPAT at each early voting site for ADA purposes  
Estimated cost to state: \$304,850.00
4. Ballot on demand grant to counties that were 100% touchscreen at early voting sites in 2006 general election (to be funded per voter)  
Grant amount: \$5,000,000.00

Total: \$35,678,060.00\*

\*Please note that counties will have additional costs.

**FAX**

**Department of State**

**Division of Elections**

**Room 1801**

**The Capitol**

**Tallahassee, Florida 32399-0250**



Date 4-25-07

Number of pages including cover sheet 5

To: \_\_\_\_\_

Tom Wilkey

EAC

Phone # \_\_\_\_\_

Fax # 202 566 3128

From: \_\_\_\_\_

Secretary Browning

Phone # [REDACTED]

Fax # \_\_\_\_\_

**REMARKS:**

Per Your Request     For your review     Reply ASAP     Per Conversation



Gracia Hillman/EAC/GOV  
05/03/2007 08:50 AM

To rrodriguez@eac.gov  
cc  
bcc  
Subject Fw: Response Requested to Draft Letter

History: This message has been replied to.

Sorry about the yahoo address thing -- again. For some reason my system insists on picking up your yahoo address. I thought I deleted that address but apparently when there was a system restoration on my computer, it some how revived it.

At any rate, here is the original email and draft letter.

--- Forwarded by Gracia Hillman/EAC/GOV on 05/03/2007 08:46 AM ---

Gracia Hillman/EAC/GOV  
To Donetta Davidson, Rosemary Rodriguez, Caroline C. Hunter/EAC/GOV, Thomas Wilkey, Juliet E. Hodgkins/EAC/GOV, Jeannie Layson  
05/02/2007 12:14 PM cc Brian Hancock/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Elien L. Colver/EAC/GOV@EAC, "Staci Fabre" [REDACTED], Stephanie Wolson/EAC/GOV@EAC, sbanks@eac.gov  
Su Response Requested to Draft Letter  
bje  
ct

All:

Attached is a draft of the letter that I will send to Rep. Carolyn Maloney in response to the questions she raised to me at the April 18 hearing.

The draft represents consensus among Gavin, Matt, Brian and me. We know that consensus, while adding value, also adds time. I was hoping to get this letter out the door by Friday of last week but obviously that did not happen.

Nonetheless, here it is. I plan to send the letter by the end of this week so I ask that you give me your comments and edits by Close of Business tomorrow (Thursday).

Thanks,  
Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100

027463

Fax: 202-566-1392  
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. Letter to Rep C Maloney, May 2007.doc

027464

**Deliberative Process  
Privilege**

The Honorable Carolyn Maloney  
United States House of Representatives  
2331 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Maloney:

I am writing this letter to follow up on a conversation I had with your staff on April 23, 2007. In this conversation we clarified some of the concerns you raised in the April 18<sup>th</sup> hearing of the Subcommittee on Information Policy, Census, and National Archives, *Ensuring Fairness and Accuracy in Elections Involving Electronic Voting Systems*.

During the hearing, you indicated that you would like further explanation as to why the U.S. Election Assistance Commission (EAC) did not immediately release its Interim Accreditation Program Assessment Reports on CIBER Labs, Inc. You have expressed concern that the language in the CIBER Assessment Reports, which state that the laboratory's test reports do not provide sufficient documentation to allow a reviewer to determine if all testing was completed, was significant and should have been immediately publicized. I appreciate the opportunity to address your question.

The CIBER Assessment Reports are a part of EAC's temporary Interim Laboratory Accreditation Program. This interim accreditation program was a stop gap measure to serve elections officials for the November 2006 federal elections while EAC waited for the National Institute of Standards and Technology (NIST) to technically review and recommend laboratories to us, per HAVA.

The laboratory accreditation process is a review of a laboratory's current policies, capabilities, management, personnel and procedures in order to determine its ability to comply with a set of program standards. In operating its temporary program, EAC did not create new methodology, but followed international standards, practices and processes in consultation with NIST, which operates the National Voluntary Laboratory Accreditation Program (NVLAP). Although NVLAP did not routinely make their laboratory assessment reports public, EAC always intended to...

027465



release its assessment reports and was going to do so when a final decision on accreditation had been made.

Ultimately, the EAC did not expedite the release of the CIBER Assessment Reports, because they did not conclude that a specific voting system was compromised—only that CIBER's test reports did not document testing sufficient to satisfy applied standards. Any conclusion as to whether proper testing was in fact done would have been made by the then governing certification authorities (the National Association of State Election Directors and the States) prior to the grant of certification. These certification bodies would have had access to the original test reports and voting systems. Nevertheless, we recognize that the public expects a very high level of transparency in the testing of voting systems. The assessment reports on CIBER and all labs under review have been posted on EAC's website. Additionally, in a letter dated January 12, 2007 (attached), EAC urged NIST to make the laboratory assessment work that it does for EAC as transparent as possible. As a result, NIST has decided that it will publish its assessment reports on its web site. A NIST fact sheet describing its program is also attached.

In addition, a broader concern has been raised by you, the General Accounting Office (GAO) and others regarding EAC's role as a clearinghouse of information. EAC is routinely presented third party reports, papers and findings. Often, the individuals who write or pass along these documents demand that EAC publish or forward them to our stakeholders. The nature, source and quality of these reports vary widely. As I am sure you can appreciate, EAC must be careful that its actions do not appear to be an endorsement of a non-federal entity. Further, as a body that accredits testing laboratories and certifies voting systems, EAC has a duty to remain both impartial and consistent with its published standards. And perhaps most importantly, EAC must ensure that any information it disseminates to the public is accurate and reliable so that we are not perpetuating unsubstantiated or erroneous information.

At the same time, EAC has heard loud and clear that we should move post haste to figure out how it can reasonably, timely and responsibly address these matters. Along with EAC's other commissioners and staff, I have taken a personal and direct interest in this matter so that we can expedite this part of our planning/program implementation process. We will keep you informed of our progress and the decisions we make.

EAC's laboratory accreditation and voting system testing and certification programs are firsts for the Federal Government. All policies, procedures and practices for this first time venture must be developed, vetted, adopted and published before the programs can be implemented. As I am sure you can appreciate, that work takes time and resources. In the context of the enormity of this work and the competing demands we face, time and resources are two things of which EAC has very little. Despite that fact, we have made enormous progress to administer and audit \$3 billion

in requirements payments to states; develop and implement voting system guidelines, and laboratory accreditation, voting system testing and certification programs; provide management guidelines and guidance to the states; and develop our clearinghouse.

I hope this explanation helps to assure you that EAC is committed to responsibly providing as much information to election officials and the public as is possible. EAC is committed to transparency and public trust. We would welcome the opportunity to further brief you on our work and the progress that has been made to date. In the meantime, please be sure to let me know if you need additional information or further clarification and again, thank you for your questions and interest.

Sincerely,

Gracia Hillman  
Commissioner

Attachments:

Letter to NIST dated January 12, 2007  
NIST Fact Sheet on Laboratory Accreditation

027467



Gracia Hillman/EAC/GOV  
04/20/2007 08:39 AM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: The Side By Side Project

History This message has been forwarded

Yes, and for Congress I think we need a poli sci, not an EO.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Rosemary E. Rodriguez  
**Sent:** 04/20/2007 08:11 AM EDT  
**To:** Gracia Hillman  
**Subject:** Re: The Side By Side Project

I am going to have to learn the DC vernacular--"rat hole" is a new term for me. I think Bruce is pretty identified w Dems so I think there may be push back on him--I think that's why Tom was going for an EO, to get one of the non-partisan folks involved. We should get the best person for our audience--so I think we should identify our audience and I think that is the Congress.

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

**From:** Gracia Hillman  
**Sent:** 04/19/2007 10:18 PM EDT  
**To:** Rosemary Rodriguez  
**Subject:** Fw: The Side By Side Project

My system picked up your personal email address. Strange but true.

-----Forwarded by Gracia Hillman/EAC/GOV on 04/20/2007 10:16PM -----

To: rosemaryrod2003@yahoo.com  
From: Gracia Hillman/EAC/GOV  
Date: 04/19/2007 10:15PM  
Subject: The Side By Side Project

I have made the following suggestion to Tom:

Tom:

I am not so sure having an election official do the side by side is the best way to go. This issue is not about election officials. It is about DC rat hole politics and the presentation of research "data."

I offer the following names for consideration.

027468

Bruce Cain and Raymond Wolfinger. Both teach at Berkeley although Wolfinger retired last spring. Both are considered at the top of the poli sci hierarchy, in terms of competence and status. I am told they are very good scholars who do not have a reputation for partisanship, although they have been involved in "the real world of politics."

Here are their Web sites:

[REDACTED]

Donetta L.  
Davidson/EAC/GOV  
04/03/2007 11:28 AM

To ghillman@eac.gov, Caroline Hunter, Rosemary Rodriguez,  
twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject memo

Dear colleagues:

Attached is a memo for your review. We can hopefully go over the particulars when we have our next call.  
Thank you for all your kind well wishes.

Donetta



Commissioner subcommittee memo 4-2-07.doc

027470



**U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005**

MEMORANDUM

**TO:** Commissioner Hillman, Commissioner Hunter, Commissioner Rodriguez, Thomas Wilkey, Juliet Hodgkins and Jeannie Layson

**FROM:** Donetta Davidson

**DATE:** April 3, 2007

**RE:** New Commissioner Subcommittee

As a supplement to the memo issued on March 19<sup>th</sup> regarding the creation of commissioner subcommittees, I would like to propose the creation of one additional subcommittee.

Commissioners Hunter and Rodriguez have expressed their interest in the National Voter Registration Act (NVRA) and have volunteered to serve on a subcommittee to work on a number of issues we need to complete in the next few months.

Their willingness to take on this important subject will assist the staff in developing strategies to complete our work in a timely fashion.

**RECOMMENDATION:**

Create a new subcommittee on NVRA issues.



"Adam Ambrogi"  
[REDACTED]

05/19/2005 02:18 AM

Please respond to  
"Adam Ambrogi"  
[REDACTED]

To "martinez, ray" <rmartinez@eac.gov>, aambrogi@eac.gov

cc

bcc

Subject Research Scrubbing

Boss:

Attached is my list of the scrubbed "must" provisions in the statute. Beyond that, I have provided my suggestion on the long lines, and on the 241 section, have BOLDED priority research, and have included notes on what might go down on certain topics.

Some comments here are just for you, so when I come in, I can clean up the first section if you want to make some copies for the other COMmissioners, please let me know.

Hope this helps.

---  
Adam Ambrogi  
1987 N. Adams St.  
Arlington, VA 22201  
[REDACTED]  
[REDACTED]



Amended Research Topics Memo.doc

027472

Title III, Subtitle B requires that the EAC shall provide guidance to the states on all the requirements found in HAVA, Title III, Subtitle A.

- 1) *HAVA 301 (a)(4) & (5)*: Legal research to be performed to determine whether the Voluntary Voting System Guidelines meet the “Alternative language accessibility” and “Error rates” legal standards found in sections of 301 (a).
- 2) *HAVA 302 (b)*: Voting Information Requirements. Research to be completed on how the state “caused voting information” to be publicly posted, the kinds of information displayed, and the relative effectiveness of that signage. [Potential efficiencies with Design for Democracy/AIGA Research on Signage efficiency.]
- 3) *HAVA 303(a) (8) (A-C)*: Research/Work with the Social Security Administration to understand the process by which states link to the SSA system to verify the last-4 digits of the registrant’s Social Security number. [Need to examine system, understand how it works, understand how rejected numbers are treated by the states, and provide guidance to the states on how to treat those “rejects.”]
- 4) NVRA Form
  - a. Update of the form; examine form for clarity, usability, electronic capabilities, internet voter registration. [Potential work with Design for Democracy; potential ideal ballot design templates.]
  - b. Examine effectiveness under the NVRA. The EAC is now the designated agency that looks at the effectiveness of the NVRA. There have been complaints from advocacy groups that the states have not fully developed the proper distribution of voter registration forms through the Voter Registration Agencies (as defined by NVRA).
- 5) Help America Vote College Program. EAC “shall create” (still in existence.)
  - a. Research on the HAV College Program “Create a Poll Worker Program” Kit that can be developed/distributed to colleges, to inform them of the best method of creating poll worker volunteer organizations. Work with design organizations to plan/create such programs.
  - b. Research on the best methods to train college pollworkers, potentially through partnership with the Pollworker Institute (Warren, Collins-Folely).
  - c. Potential use for VA, NJ Gubernatorial elections in Nov. 05.
  - d. Focus on research on how to better comply with *HAVA Sec. 501 (b)(2)*, which requires the EAC to take actions (as appropriate) to encourage State and local governments to use the services of the student participating in the Program. [Perhaps through the Pollworker Institution, or certain organizations that specialize in state/local volunteer programs.]
- 6) *HAVA 205 (b)*: Information from other Federal Agencies. “The EAC may secure directly information from any Federal Department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Commission, the head of such department or agency shall



furnish such information to the Commission.” What information would be necessary, and from what agencies? File material from FEC? DOD UOCAVA voter statistics? US Commission on Civil Rights Florida testimony? There is a lot of essential areas that we might want for historical or clearinghouse function to have in-house, for research purposes. Research should be done as to find out the kinds and type of information that the Commission might need in carrying out duties.

- 7) [QUESTION FOR RM: READ CAREFULLY!! HAVA Sec. 703(b). I know that we were working on some form for UOCAVA, but it's been a while since I've reviewed the report. 703(b) states that we, in conjunction with the Standards Board and Board of Advisors, “**shall** develop a standardized format for the reports submitted by states,...and **shall** make the format available to the States and units of government submitting such reports.] Have we researched/developed this form? I don't have my work on me here.
- 8) [ADDITIONAL QUESTION: 801(a) States that the EAC shall be transferred all the functions which the Office of Election Administration exercised under the date of their authority from the FEC. What specific authority did the OEA have, under the FEC, or administrative rule?

My focus in a quick review of the research topics are:

- 1) What are the changes that HAVA makes to our elections system, and how can we prepare election administrators for that change?
- 2) What were the major problems individual voters and election officials had on Election Day 2004?

It strikes me that we need to tackle the issue that will have the most concern for most Americans.

On those issues that face the elections process; you would want to tackle the retrospective and the prospective. Aside from the topic below, I would recommend that:

- 1) Research be done on the reasons and rationale for long lines that may occur on election day, and what can be done before election day to prepare for long lines. [Handles 2004 problems as well as potentially consolidated polling places.]

**HAVA Research Action [Priority Actions BOLDED]:**

- (1) Methods and mechanisms of election technology and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

**(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.

(4) Methods of conducting provisional voting.

**(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.**

(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.** *[Chair will likely push this-compromise for the voter fraud provisions.]*

**(8) Methods of recruiting, training, and improving the performance of poll workers.**

**(9) Methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.**

(10) The feasibility and advisability of conducting elections for Federal office on different days, at different places, and Public information. during different hours, including the advisability of establishing a uniform poll closing time and establishing—

(A) a legal public holiday under section 6103 of title 5, United States Code, as the date on which general elections for Federal office are held;

(B) the Tuesday next after the 1st Monday in November, in every even numbered year, as a legal public holiday under such section;

(C) a date other than the Tuesday next after the 1<sup>st</sup> Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) any date described in subparagraph (C) as a legal public holiday under such section.

(11) Federal and State laws governing the eligibility of persons to vote.

(12) Ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(13)(A) The laws and procedures used by each State that govern—

- (i) recounts of ballots cast in elections for Federal office;
  - (ii) contests of determinations regarding whether votes are counted in such elections; and
  - (iii) standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.
- (B) The best practices (as identified by the Commission) that are used by States with respect to the recounts and contests described in clause (i).
- (C) Whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

(14) The technical feasibility of providing voting materials in eight or more languages for voters who speak those languages and who have limited English proficiency.

**(15) Matters particularly relevant to voting and administering elections in rural and urban areas. [POTENTIAL: Long lines issues fits in here]**

(16) Methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.

(17) The best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote in the Federal contest at the top of the ballot.

(18) Broadcasting practices that may result in the broadcast of false information concerning the location or time of operation of a polling place.

(19) Such other matters as the Commission determines are appropriate.

Proposed Amendments:

1) Amendment to Article V, Section 1(e)(ii):

A majority of Executive Members shall be present for a quorum at such time as a roll call is taken whether by physical presence, by telephone conference call, or virtual (electronic media) meeting; and to require a quorum re-establishment prior to action being taken. *Postponed and referred to the Bylaws Committee.*

Recommendation: Motion to strike amendment offered under Article V, Section 1(e)(ii), and insert in Article V, Section 1(e)(iii), the words "roll call" prior to the word, "vote." The Executive Board shall agree to actions by a majority roll call vote of seated members of the Executive Board. *Motion passed.*

2) Amendment to Article VIII, Section (3)(a):

The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws, limiting the term present and voting to mean only those members present at such time as the roll call is taken whether by physical presence or presence at a virtual meeting room meeting. *Postponed and referred to the Bylaws Committee.*

Recommendations:

Motion to amend Article VIII, Section 1(a): A quorum shall be established when 56 Standards Board members are present for a meeting as determined by a roll call or quorum call of the Standards Boards members. *Motion passed.*

Motion to amend Article VIII, Section 3, by adding Article VIII, Section 3(c): Votes taken during meetings conducted by conference call and through virtual (electronic media) means shall have a quorum established prior to voting. *Motion passed.*

3) Motion to refer Article VII, Section 1 to the Bylaws Committee for review. *Referred to the Bylaws Committee.*

Recommendation: Send the matter to the General Counsel for a more detailed analysis and report. *Motion passed.* Carol Johnson

4) Motion to allow the Bylaws Committee to make corrections to clerical errors. *Motion passed.*

Items Pending Consideration by Bylaws Committee  
As of 13 March 2007

The Nominating Committee has referred the following items to the Bylaws Committee for further consideration:

- How elections will be certified in the case of a tie vote; for example between the third and fourth candidates when only three can be elected. *straw poll, coin toss Tim Hurst - language*
- How elections will be certified if the elected candidates tip the balance of party affiliation on the Executive Board, as specified in HAVA (not more than five (5) of the same political party), if between existing + those elected, 6 or more of same party - Toni  
Whether Unaffiliated, Independent and Nonpartisan are one in the same or three separate categories of "party" affiliation. (HAVA Section 213 (c) requires a nine (9) member Executive Board. Not more than five (5) members may be of the same political party.) - Toni

either next eligible, runoff, or seat-preference to seat 5th

- ✗ Whether the bylaws should establish regions to assure geographical representation on the Executive Board. - *let membership decide*  
*No action taken*

deadline for absentee what about when not enough nominations?

- Whether there should be nominations from the floor for Executive Board elections. *Preference for closing nominations + having absentee voting Δ Article II + eliminate proxy for exec.*
- Should the Election Certification Committee (for Executive Board elections) be stipulated in the bylaws. → *Yes*

- Whether proxy voting should be allowed.

The following item was left pending from the February Standards Board meeting:

- Frequency of meetings of EAC Standards Board

Article VI, 1(a-b)

Article VIII 2(d) add language that proxy voting not allowed for St. Bd. exec. elections

- By middle of June - meet in month 4/23rd week
- ① Where should Amendments go?
  - ② ~~Research issue of whether state law defines~~

(860) 573-5728

**EAC Standards Board  
Bylaws Committee  
March 14, 2007**

**Summary Notes**

**Call to Order:**

Chair Tonni Bartholomew convened the meeting at 1:07 p.m.

**Members Present:**

Tonni Bartholomew, Marilyn Avery, Joanne Armbruster, and Tim Hurst

**Members Not Present:**

Kevin Kennedy and Howard Sholl

**Other Standards Board Members Present:**

Peggy Nighswonger, *ex officio*

**EAC Personnel Present:**

Commissioner Gracia Hillman (Designated Federal Officer), Tamar Nedzar (EAC Law Clerk) and Sheila Banks (Spec Asst to Comm Hillman)

**Next Standards Board Meeting**

Commissioner Hillman reported that the date of the next Standards Board meeting would depend on the timeline for issuing the next iteration of the VVSG. The Technical Guidelines Development Committee (TGDC) plans to send its recommendations to EAC in July. However, congressional legislation may impact current progress, which would impact when the next Standards Board meeting would be held.

As it stands, the earliest time a meeting could take place is October 2007. Subsequently, any proposed amendments from the Bylaws Committee would have to be sent to the full Standards Board 70 days before the meeting (early July).

**Proposed Amendment Items**

The Nominating Committee referred the following items to the Bylaws Committee for further consideration:

**Item #1** How elections will be certified in the case of a tie vote; for example between the third and fourth candidates when only three can be elected.

**Action** Tim Hurst will research state election laws and draft wording that would address the tie vote problem. Tonni Bartholomew will find where the wording will go in the newly adopted Bylaws.

**Item #2** How elections will be certified if the elected candidates tip the balance of party affiliation on the Executive Board, as specified in HAVA (not more than five (5) of the same political party).

**Action** All Bylaws Committee members agreed that runoff elections were not the solution to the tip the balance scenario. The committee also agreed that the solution should be placed in the bylaws. Tonni Bartholomew volunteered to research and submit recommendations.

**Item #3** Whether Unaffiliated, Independent and Nonpartisan are one in the same or three separate categories of "party" affiliation and if HAVA Section 213 should apply to that category. (HAVA Section 213 (c) requires a nine (9) member Executive Board. Not more than five (5) members may be of the same political party.)

**Action** The Bylaws Committee agreed that unaffiliated and nonpartisan meant the same thing – not affiliated with a political party. Tonni Bartholomew will research and bring definitions back to the committee.

**Item #4** Whether the bylaws should establish regions to assure geographical representation on the Executive Board.

**Action** Commissioner Hillman reported that the Nominating Committee could go either way on the geographical representation item. The Bylaws Committee decided to not recommend establishing regions and agreed that as long as there is visual representation (i.e. a map) showing the geographic location of current Executive Board members and nominees, Standards Board members would be able to cast their votes with geographical representation in mind.

**Item #5** Whether there should be nominations from the floor for Executive Board election.

**Action** If nominations from the floor were eliminated, absentee voting could take place and there would no need for proxy voting for elections. Issues resulting from this elimination were identified by the Bylaws Committee and will be researched by Tamar Nedzar and Commissioner Hillman:

- not receiving a sufficient number of nominations
- deadline for sending and receiving absentee ballots

Additionally, changes would have to be made to Article V of the bylaws to address those issues.

*No proxy voting  
absentee voting procedure  
No nom. from floor*

**Item #6** Should the Election Certification Committee (for Executive Board elections) be stipulated in the bylaws.

**Action** The Bylaws Committee agreed that the Election Certification Committee should be appointed at the time of the Standards Board meeting. Language will need to be drafted to reflect this decision. Commissioner Hillman will have EAC determine if the new language goes into Article 5 or Article 9 of the current bylaws.

**Item #7** Whether proxy voting should be allowed.

**Action** Proxy voting would be allowed for business issues. EAC will draft language to be added to Article 8 of the current bylaws.

### **Timeline for Amendments**

It was determined that proposed amendments for the items referred to the Bylaws Committee should be completed by mid-June. Tamar Nedzar will research all sections of the bylaws to identify where the recommended amendments will go.

### **Pending Item**

The issue of the bylaws specifying the frequency of Standards Board meetings was left pending from the February board meeting. Tonni Bartholomew reviewed the EAC General Counsel's memo on this issue, a copy of which will be provided to bylaws committee members. The committee agreed that this should be handled through a resolution and not a bylaws amendment.

The next committee meeting will take place during the week of April 23.

The meeting adjourned at approximately 1:50 p.m. (EDT).



- Look @ draft minutes from May 2006 meeting - incorporate comments into draft bylaws
- Article III - December of every year, inform appointing authority who serves on St. B.
  - also as soon as EAC knows of vacancy
- Resolution 1x/year
- Amendment by way of substitution or other language
  - look @ legislative language

### Procedures

- Notice of meeting to include when bylaws amendments are due.
- See X(2)

## BYLAWS

### UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

#### Article I. Authority

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

#### Article II. Objectives:

The Standards Board will:

1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
2. Provide guidance and advice to the EAC on a variety of topics related to the administration of elections for Federal office.
3. Function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA); and all other applicable Federal laws.

#### Article III. Standards Board Membership

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - iii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

- c. The two Standards Board members who represent the same state may not be members of the same political party.

**Article IV. Standards Board Member Terms of Service and Vacancies**

- 1. The chief election official of each state shall notify the EAC and Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
- ~~2. Members of the Standards Board shall serve for a term of two (2) years and may be reappointed.~~
- 3. Vacancy appointments to the Standards Board shall be made in the same manner as the original appointment pursuant to HAVA. → words from HAVA

accordance with 213(a) of HAVA  
Spell out Use language from Article III

**Article V. Executive Board of the Standards Board**

- 1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.
    - i. The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.
    - ii. In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
    - iii. Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
    - iv. Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15 or in the event of a vacancy, the date indicated on the solicitation.
    - v. Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.

Reorganize

Expired End of Term + Vacancy + enumerate + enumerate

c. Elections.

1. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
2. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State, a member of a Citizen Board, or a State Election Director. The ballot shall also include concise biographical information for each candidate.
3. For nominations following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three positions shall be local election officials. For nominations following the second election (2007), two of the three positions shall be for state election officials. The number of state and local nominations shall continue to alternate in subsequent elections.
4. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.

d. Executive Board Members Terms of Service and Vacancies.

- i. The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
- ii. Members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
- iii. Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.
- iv. The Chair, Vice-Chair, Secretary, and Parliamentarian shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding terms.
- v. In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.
- vi. An Executive Board member may be removed from the Executive Board by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.

e. Meetings.

- i. Any two members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.
- ii. A ~~majority~~ majority of Executive Board Members shall be present for a

separate into  
Subsection  
Initial  
Term

Research  
Removal for  
cause

malfeasance, criminal activity

see open meetings memo VI. If Executive Board decided to exercise to take action, shall adhere to FACA

quorum.

- iii. The Executive Board shall agree to actions by a ~~majority~~ majority vote of the Executive Board. Proxy voting will not be allowed in Executive Board votes. Any member of the Standards Board may attend and participate in any and all discussions, but may not vote.

at discretion of chair

Article VI. Executive Board Duties

Each describes duties

- 1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and the EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.

h. Chair shall appoint people to act as

- 2. Vice-Chair. The Vice-Chair shall:
  - a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair from time to time as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.

- 3. Secretary. The Secretary shall:
  - a. Maintain the minutes at Executive Board and Standards Board meetings, with assistance from the DFO.
  - b. Assist the Chair at meetings and from time to time as the Chair may designate.

New word/Oversee preparation of transmission of minutes are approved, go to DFO for PRP

- 4. Parliamentarian. The Parliamentarian shall:
  - a. Ensure that all meetings are run in accordance with Roberts Rules of Order.
  - b. Fulfill the duties of the Parliamentarian in his or her absence.
  - c. Be responsible for time limitations on agenda items and holding speakers accountable to keep on time as listed (if at all) on the agenda.
  - d. Serve as the Chair of the Bylaws Committee.

- 5. Executive Board. Generally. The Executive Board shall:
  - a. Perform all duties required under HAVA and other applicable Federal law.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Approve the minutes of the Executive Board meetings.
  - e. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - f. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.

Chair shall appoint Parliamentarian to preside over Standards Board Meetings

in accordance w/ these bylaws ✓  
Assume forfeiture creates vacancy ✓  
Vacancies shall be filled in accordance with bylaws ✓

in at least one

- g. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, ~~in accordance with section (5), subsection (d) of this Article.~~ In the event that an Executive Board member fails to attend ~~or participate~~ <sup>or participate</sup> in a minimum of twenty five percent (25%) of Executive Board meetings within the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board.
- h. As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.
- i. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.

- 5. Designated Federal Officer (DFO). The DFO shall:
  - a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.

- f. Provide adequate staff support to the Standards Board, to assist with:
  - i. Notifying members of the time and place for each meeting.
  - ii. Maintaining records for all meetings, including subgroup or working group activities, as required by law.
  - iii. Maintaining the roll.
  - iv. Assuring that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
  - v. Housing at the EAC and maintaining official Standards Board records, including subgroup and working group activities.
  - vi. Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
  - vii. Responding to official correspondence.
  - viii. Acting as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures.
  - ix. Preparing and handling all reports, including the annual report as required by FACA.

Article VII. Meetings

- 1. The Standards Board shall meet as <sup>open</sup> required, but not less frequently than once every 2 years for the purposes of selecting the Executive Board. Meetings shall be called by the DFO in consultation with the Executive Board.
- 2. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.

1. Upon Notice of Executive Board Meeting, Executive Board shall notify the Standards Board.  
Notice w/ Standards Board  
Reorganize

make conditions explicit

use HAVA language in 215(2)(B-C)

list C - ~~that~~ - B

but not less frequently than

Write Resolution for Bylaws committee - wish to meet 2 minimum 1/4

027486

on S.B.

3. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.

4. All meetings of the Standards Board shall be conducted in accordance with Roberts Rules of Order.

5. Open/Closed Meetings.

- A
1. Open  
5. closed
- X
- a. Unless otherwise determined in advance, all Standards Board meetings will be open to the public. O
  - b. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public. O
  - c. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance. C
  - d. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session. O
  - e. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting. O
  - f. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time. O
  - g. Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session. C
  - h. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting. C

6. Minutes.

- i. The DFO, or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
- ii. Minutes of open meetings shall be available to the public upon request. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).
- iii. Meeting minutes shall include the following: (1) Time, (2) date, (3)

location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.

*Minutes  
are considered  
part of  
gov. X*

iv. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will housed at the EAC and maintained according to the Federal Records Act.

### Article VIII. Quorum and Proxy Voting

1. A quorum shall be established when fifty percent (50%) plus one of Standards Board members is present for a meeting or are present by proxy.
  - a. Only other Standards Board members may declare another Standards Board member present by proxy.
  - b. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting.
2. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.
3. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member to cast an absent member's proxy vote.
4. The Chair shall appoint a proxy committee to verify the eligibility of proxy votes.
5. Voting procedures for the Standards Board, the Executive Board, and the subcommittees will follow the accepted procedure, in the latest edition of Robert's Rules of Order. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

*Move  
to  
Article P. 561 of  
XII*

### Article IX. Committees

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) representative of both elected and appointed officials.

1. Meetings.
  - a. All committees may meet informally at any time for the purpose of conducting their business, including telephonically or through electronic media.
2. Standing Committees.
  - a. Nominating Committee. The Nominating Committee shall:
    - i. Be comprised of five (5) members.
    - ii. Solicit nominations for the Executive Board from Standards Board members.
    - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph



- ii of these Bylaws.
- b. Bylaws Committee. The Bylaws Committee shall:
  - i. Be comprised of seven (7) members.
  - ii. Be Chaired by the Parliamentarian.
  - iii. Submit all recommended amendments to the Executive Board for a two (2) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
- 3. Ad-Hoc Committees.
  - a. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.
  - b. The Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
  - c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.
  - d. No ad-hoc committee shall be comprised of more than ten (10) Standards Board Members.

#### **Article X. Amendments**

- 1. The bylaws may be amended based on a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.
- 2. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact statement.
- 3. All proposed bylaw changes must be submitted in writing to the DFO, who shall thereafter forward the proposed changes to the Standards Board Bylaws Committee and the EAC's General Counsel.
  - a. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - b. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
- 4. The Executive Board shall forward all proposed changes to Standards Board members at least thirty-five (35) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all supporting material on EAC's website at least thirty-five (35) days prior to the next meeting of the Standards Board.

#### **Article XI. Expenses and Reimbursement.**

- 1. Expenses related to Standards Board operations will be borne by the EAC.
- 2. Expenditures of any kind must be approved in advance by the DFO.
- 3. Standards Board members shall not receive any compensation for their services, but

*Article XIII Roberts Rules*

shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

**Section XII Effective Date**

*Article IV*

1. These By-Laws are effective upon adoption by the Standards Board.

**Section XII: Transition Procedures and Ratification**

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

*XIV. Roberts Rules*

**DRAFT**

BYLAWS

UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

Article I. Authority

- 1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

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Article II. Objectives:

The Standards Board will:

- 1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
- 2. Provide guidance and advice to the EAC on a variety of topics related to the administration of elections for Federal office.
- 3. Function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA); and all other applicable Federal laws.

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Article III. Standards Board Membership

- 1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - iii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

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- c. The two Standards Board members who represent the same state may not be members of the same political party.

**Article IV. Standards Board Member Vacancies**

**Deleted:** Terms of Service and

- 1. The chief election official of each state shall notify the EAC and Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
- 2. Vacancy appointments to the Standards Board shall be made in accordance with Section 213(a) of HAVA.

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**Article V. Executive Board of the Standards Board**

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- 1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:

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a. Membership.

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- i. Not more than five (5) members of the Executive Board may be state election officials.
- ii. Not more than five (5) members of the Executive Board may be local election officials.
- iii. Not more than five (5) members of the Executive Board may be of the same political party.

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b. Nominations.

i. Expired Terms.

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(a) The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.

(b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.

(c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15.

(d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.

ii. Vacancies Before the End of a Term.

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(a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.

- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
- (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
- (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.

c. Elections.

- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
- ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State, a member of a Citizen Board, or a State Election Director. The ballot shall also include concise biographical information for each candidate.
- iii. For nominations following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three positions shall be local election officials. For nominations following the second election (2007), two of the three positions shall be for state election officials. The number of state and local nominations shall continue to alternate in subsequent elections.
- iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.

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d. Executive Board Members Terms of Service and Vacancies.

- i. Generally
  - (a) The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
  - (b) The Chair, Vice-Chair, and Secretary, shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding terms.
  - (c) An Executive Board member may be removed from the Executive Board for cause by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
  - (d) In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member to the Executive Board until the next Standards Board meeting.

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- (e)
- ii. Initial Term.
  - (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
    - (i) Three (3) shall serve for one (1) term.
    - (ii) Three (3) shall serve for two (2) consecutive terms.
    - (iii) Three (3) shall serve for three (3) consecutive terms.

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- iii. Subsequent Terms.
  - (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
  - (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.

e. Meetings.

- i. Any two members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.
- ii. A majority of Executive Board Members shall be present for a quorum.
- iii. The Executive Board shall agree to actions by a majority vote of the Executive Board.
- iv. Proxy voting will not be allowed in Executive Board votes.
- v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.
- vi. If the Executive Board decides to hold an open meeting, it shall do so in accordance with the requirements FACA.

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Article VI. Executive Board Duties

- 1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and the EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.
  - g. Appoint a Parliamentarian to preside over all Standards Board meetings.
    - i. The Parliamentarian shall provide advice and assistance to the Chair so that the Chair can run all meetings in accordance with Roberts Rules of Order.
- 2. Vice-Chair. The Vice-Chair shall:

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- a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair from time to time as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:

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- a. Oversee preparation and transmission of the minutes at Executive Board and Standards Board meetings, with assistance from the DFO. *review minutes before distributed to Standards Board*
  - b. Assist the Chair at meetings and from time to time as the Chair may designate.
- Executive Board, Generally. The Executive Board shall:
- a. Perform all duties required under HAVA and other applicable Federal law.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings
  - d. Approve the minutes of the Executive Board meetings.
  - e. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - f. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - g. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws. In the event that an Executive Board member fails to attend or participate in at least one (1) Executive Board meeting within the the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board, thereby creating a vacancy. Such vacancy shall be filled in accordance with these bylaws.
  - h. As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an appendix of all dissenting comments from Executive Board members.
  - i. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
  - j. Upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board *at the Executive Board meeting.*

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5. Designated Federal Officer (DFO). The DFO shall:
- a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting.
      - (b) Upon notice of an open Executive Board meeting, notify the Standards Board and public of time and place for the meeting.

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- (c) Notify appointing authorities of any and all vacancies on the Standards Board.
- ii. Recordkeeping and Administration. The DFO shall:
  - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
  - (b) Maintain the roll.
  - (c) Assure that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
  - (d) House at the EAC and maintain official Standards Board records, including subgroup and working group activities.
  - (e) Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
  - (f) Respond to official correspondence.
  - (g) Prepare and handle all reports, including the annual report as required by FACA.
  - (h) Acting as the Standard Board's agent to collect, validate, and pay vouchers for pre-approved expenditures.

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 frequently than once every 2 years for the  
 purposes of selecting the Executive Board

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**Article VII. Meetings**

1. Pursuant to Sections 215(a)-(c) of HAVA, the Standards Board shall hold a meeting of its members:
  - a. At such times as it considers appropriate for the purposes of conducting such business as it considers appropriate under HAVA.
  - b. In any event, not less frequently than once every two (2) years for purposes of selecting the Executive Board.
  - c. For the purposes of voting on voluntary voting system guidelines referred to it under Section 222 of HAVA, not less frequently than once every year.
2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.
  - a. Open Meetings.
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
  - b. Closed Meetings.
  - c. Unless otherwise determined in advance, all Standards Board meetings will be open to the public.
  - d. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.

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- e. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.
- f. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.
- g. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
- h. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.
- i. Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session.
- j. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part of a meeting.

open  
closed

6. Minutes.

- a. The DFO or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
- b. Minutes of open meetings shall be available to the public upon request. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).
- c. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
- d. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will housed at the EAC and maintained according to the Federal Records Act.

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Article VIII. Quorum and Proxy Voting

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1. A quorum shall be established when fifty percent (50%) plus one of Standards Board members is present for a meeting or are present by proxy.

a. ~~Only other Standards Board members may declare another Standards Board member present by proxy.~~

*2* b. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting.

2. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.

3. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair, clearly identifying the Standards Board member to cast an absent member's proxy vote.

The Chair shall appoint a proxy committee to verify the eligibility of proxy votes.

Voting procedures for the Standards Board, the Executive Board, and the subcommittees will follow the accepted procedure, in the latest edition of Robert's Rules of Order. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

### Article IX. Committees

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) *are* representative of both elected and appointed officials.

1. Meetings:

a. All committees may meet informally at any time for the purpose of conducting their business, including telephonically or through electronic media.

2. Standing Committees:

a. Nominating Committee: The Nominating Committee shall:

i. Be comprised of five (5) members.

ii. Solicit nominations for the Executive Board from Standards Board members.

iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph ii of these Bylaws.

b. Bylaws Committee: The Bylaws Committee shall:

i. Be comprised of seven (7) members.

ii. ~~Be Chaired by the Parliamentarian.~~

iii. Submit all recommended amendments to the Executive Board for a ~~two~~ *seven*

*11* ~~7~~ day comment period before submitting recommendations to the Standards Board for resolution and adoption.

3. Ad-Hoc Committees:

a. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.

- b. The Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
- c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.
- d. ~~No ad-hoc committee shall be comprised of more than ten (10) Standards Board Members.~~

**Article X. Amendments**

- ~~X~~ <sup>A</sup> The bylaws may be amended <sup>by a</sup> ~~based on~~ a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.
- ~~X~~ <sup>1</sup> The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact <sup>of the proposed amendment.</sup>
- ~~X~~ <sup>2</sup> All proposed bylaw changes must be submitted in writing to the DFO, who shall thereafter forward the proposed changes to the Standards Board Bylaws Committee and the EAC's General Counsel.
  - a. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
- ~~X~~ <sup>C</sup> The Standards Board's Executive Committee shall place the <sup>Bylaws Comm.</sup> report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
- ~~X~~ <sup>3</sup> The Executive Board shall forward all proposed changes to Standards Board members at least thirty-five (35) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all supporting material on EAC's website at least thirty-five (35) days prior to the next meeting of the Standards Board.

create form  
no later than  
December 1 or  
within the 70-day  
time frame provided  
by the Executive  
Committee.  
(Break up)

**Article XI. Expenses and Reimbursement.**

1. Expenses related to Standards Board operations will be borne by the EAC.
2. Expenditures of any kind must be approved in advance by the DFO.
3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

~~Article XII~~ p. 561

**Section XII. Effective Date**

**Article XIII**

1. These By-Laws are effective upon adoption by the Standards Board.

**Article XIV**

**Section XII: Transition Procedures and Ratification**

b) Bylaws committee will transmit proposed bylaws committees to Executive Board

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

**DRAFT**

\_\_\_\_\_ date \_\_\_\_\_ date  
Chair DFO

**DRAFT**

These bylaws were last updated <sup>10/10/06</sup>  
\_\_\_\_\_ (date) + supersede any previous  
versions.

## BYLAWS

Add:  
These bylaws  
consist of → X  
pages.

### UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

The U.S. Election Assistance Commission Standards Board, hereinafter referred to as Standards Board, embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

#### Article I. Authority

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], as such statutes may be amended from time to time, the Standards Board has been granted its authority through its charter with the United States Election Assistance Commission (EAC) (filed with Congress on June 14, 2004).

#### Article II. Objectives:

The Standards Board will:

1. Advise the EAC through review of the voluntary voting system guidelines described in Title II Part 3 of HAVA; through review of the voluntary guidance described under Title III of HAVA; and through the review of the best practices recommendations described in Section 241 of Title II of HAVA, as required by HAVA or as may be developed by EAC.
2. Provide guidance and advice to the EAC on a variety of topics related to the administration of elections for Federal office.
3. Function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act (FACA); and all other applicable Federal laws.

#### Article III. Standards Board Membership

1. Pursuant to Section 213(a) of HAVA, the Standards Board shall consist of 110 members, as follows:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - ii. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - iii. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.

- c. The two Standards Board members who represent the same state may not be members of the same political party.

#### **Article IV. Standards Board Member Vacancies**

1. The chief election official of each state shall notify the EAC and Executive Board of the Standards Board within five (5) business days of any vacancy or membership changes to the Standards Board.
2. Vacancy appointments to the Standards Board shall be made in accordance with Section 213(a) of HAVA:
  - a. Fifty-five (55) shall be state election officials selected by the chief State election official of each State.
  - b. Fifty-five (55) shall be local election officials selected as follows:
    - iv. Each state's local election officials, including the local election officials of Puerto Rico and the United States Virgin Islands, shall select a representative local election official from the state in a process supervised by the chief election official of the state.
    - v. In the case of the District of Columbia, Guam, and American Samoa, the chief election official shall establish a procedure for selecting an individual to serve as a local election official. The individual selected under such a procedure may not be a member of the same political party as the chief election official.
  - c. The two Standards Board members who represent the same state may not be members of the same political party.
3. In December of each year, the EAC shall notify the appointing authority of each state or territory who represents their state or territory on the Standards Board.

#### **Article V. Executive Board of the Standards Board**

1. Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows:
  - a. Membership.
    - i. Not more than five (5) members of the Executive Board may be state election officials.
    - ii. Not more than five (5) members of the Executive Board may be local election officials.
    - iii. Not more than five (5) members of the Executive Board may be of the same political party.
  - b. Nominations.
    - i. Expired Terms.
      - (a) The Nominating Committee shall solicit nominations for the Executive Board from Standards Board members. The Nominating Committee shall send to Standards Board members a solicitation no later than December 1<sup>st</sup> immediately prior to the expiration of any Executive Board member's term. The solicitations shall designate the address and form for submitting nominations.

- (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than January 15.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.
- ii. Vacancies Before the End of a Term.
- (a) In the event of a vacancy on the Executive Board prior to the expiration of a member's term on the Executive Board, the Nominating Committee shall send to Standards Board members a solicitation no later than sixty (60) days before the next meeting of the Standards Board. The solicitations shall designate the address and form for submitting nominations.
  - (b) Standards Board members may nominate themselves or other Standards Board members by responding to the solicitation.
  - (c) Nominations shall be submitted to the Standards Board's Designated Federal Officer (DFO) in writing and may be submitted electronically no later than the date indicated on the solicitation.
  - (d) Upon receipt of nominations, the Nominating Committee shall prepare a ballot to be distributed to the Standards Board at least 15 days prior to the date of the Standards Board meeting immediately following the submission deadline.
- c. Elections:
- i. Elections to the Executive Board shall be by secret ballot and shall take place at a meeting of the Standards Board.
  - ii. The ballot shall be designed to enable Standards Board members to select candidates based on the following: (1) With which party the candidate affiliates, (2) whether the candidate is a state or local election official, (3) which state or territory the candidate represents, (4) whether the candidate was elected or appointed, and (5) in the case of state election officials, whether the candidate is a Secretary of State, a member of a Citizen Board, or a State Election Director. The ballot shall also include concise biographical information for each candidate.
  - iii. For nominations following the first election (2005), not including any special elections to fill unexpired terms, two (2) of the three positions shall be local election officials. For nominations following the second election (2007), two of the three positions shall be for state election officials. The number of state and local nominations shall continue to alternate in subsequent elections.
  - iv. Within thirty (30) days of an Executive Board election, the Executive Board members shall convene to elect a Chair, Vice-Chair, Secretary, and Parliamentarian.
- d. Executive Board Members Terms of Service and Vacancies.

- i. Generally.
  - (a) The Chair of the Executive Board shall notify the EAC and Nominations Committee Chair within five (5) business days of any vacancy on the Executive Board.
  - (b) The Chair, Vice-Chair, and Secretary, shall not serve for a term of more than one (1) year. An Executive Board member shall not serve for two (2) consecutive terms for the same office, except in the case of a member serving the unexpired term of an office, in which case the member may be elected to the same office for the succeeding terms.
  - (c) An Executive Board member may be removed from the Executive Board for cause by a vote of two-thirds (2/3) of Standards Board members at a Standards Board meeting.
  - (d) In the event of a vacancy in the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.
  - (e)
- ii. Initial Term.
  - (a) Pursuant to Section 213(c)(3) of HAVA, of the members first selected to serve on the Executive Board of the Standards Board:
    - (i) Three (3) shall serve for one (1) term.
    - (ii) Three (3) shall serve for two (2) consecutive terms.
    - (iii) Three (3) shall serve for three (3) consecutive terms.
- iii. Subsequent Terms.
  - (a) Pursuant to Section 213(c)(2) of HAVA, members of the Executive Board shall serve for a term of two (2) years and may not serve for more than three (3) consecutive terms.
  - (b) Members of the Standards Board who have previously served on the Executive Board shall be eligible to be nominated to the Executive Board no sooner than two (2) years from the last term in which they served on the Executive Board.

#### Meetings.

- i. Any two members of the Executive Board may call an Executive Board meeting by filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.
- ii. A majority of Executive Board Members shall be present for a quorum.
- iii. The Executive Board shall agree to actions by a majority vote of the Executive Board.
- iv. Proxy voting will not be allowed in Executive Board votes.
- v. Any member of the Standards Board may attend and at the discretion of the Chair, may participate in any and all discussions at an Executive Board meeting, but may not vote.
- vi. If the Executive Board decides to hold an open meeting, it shall do so in accordance with the requirements FACA.



## Article VI. Executive Board Duties

1. Chair. The Chair shall:
  - a. Preside over all meetings of the Executive Board and Standards Board.
  - b. Appoint the chair of standing committees and any ad hoc committees of the Standards Board.
  - c. Establish the agenda for meetings of the Executive Board and Standards Board in consultation with the DFO.
  - d. Call meetings of the Executive Board and Standards Board in consultation with the DFO.
  - e. Act as the official liaison between the Standards Board and the EAC for all resolutions, recommendations, and information requests.
  - f. Serve as an *ex officio* member of all committees.
  - g. Appoint a Parliamentarian to preside over all Standards Board meetings.
    - i. The Parliamentarian shall provide advice and assistance to the Chair so that the Chair can run all meetings in accordance with Roberts Rules of Order.
2. Vice-Chair. The Vice-Chair shall:
  - a. Preside over meetings of the Executive Board and Standards Board in the Chair's absence.
  - b. Perform other duties as may be appropriate in the Chair's absence.
  - c. Assist the Chair from time to time as the Chair may designate.
  - d. In the event of a vacancy before the completion of the Chair's term, serve as the Chair.
3. Secretary. The Secretary shall:
  - a. Review Executive Board minutes before distribution to Standards Board members.
  - b. Ensure, with assistance from the DFO, that meeting minutes are properly on file.
  - c. Assist the Chair at meetings and from time to time as the Chair may designate.
4. Executive Board, Generally. The Executive Board shall:
  - a. Perform all duties required under HAVA and other applicable Federal law.
  - b. Appoint the membership of appropriate standing committees and ad hoc committees by soliciting interest from the Standards Board membership.
  - c. Meet as necessary to address issues of concern in between Standards Board meetings.
  - d. Approve the minutes of the Executive Board meetings.
  - e. Convene Standards Board meetings, including, but not limited to, meetings by conference call and virtual meetings. Such meetings must allow each Standards Board member to include their comments and view or hear others' comments.
  - f. Consult with the DFO to ensure compliance with federal statutes and other applicable regulations.
  - g. Attend Executive Board meetings, including, but not limited to, meetings by conference call and virtual meetings, in accordance with these bylaws. In the event that an Executive Board member fails to attend or participate in at least one (1) Executive Board meeting within the the preceding twelve (12) month period, such Executive Board member shall forfeit his or her position on the Executive Board, thereby creating a vacancy. Such vacancy shall be filled in accordance with these bylaws.
  - h. As soon as possible, provide Standards Board Members all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA. Executive Board recommendations to the Standards Board pursuant to Section 222(b)(3) of HAVA shall include an

- appendix of all dissenting comments from Executive Board members.
- i. Perform all other duties as from time to time the Standards Board may delegate to the Executive Board.
- j. Upon notice of an Executive Board meeting, the Executive Board shall notify the Standards Board of the Executive Board meeting.
- 5. Designated Federal Officer (DFO). The DFO shall:
  - a. Serve as the government's agent for all Standards Board activities.
  - b. Approve or call Standards Board meetings.
  - c. Approve agendas proposed by the Executive Committee.
  - d. Attend all Standards Board and Executive Board meetings.
  - e. Adjourn Standards Board and Executive Board meetings when such adjournment is in the public interest.
  - f. Provide adequate staff support to the Standards Board, to assist with:
    - i. Notice. The DFO shall:
      - (a) Notify members of the time and place for each meeting.
      - (b) Upon notice of an open Executive Board meeting, notify the Standards Board and public of time and place for the meeting.
      - (c) Notify appointing authorities of any and all vacancies on the Standards Board.
    - ii. Recordkeeping and Administration. The DFO shall:
      - (a) Maintain records for all meetings, including subgroup or working group activities, as required by law.
      - (b) Maintain the roll.
      - (c) Assure that minutes of all Standards Board and Executive Board meetings, including subgroup and working group activities are prepared and distributed.
      - (d) House at the EAC and maintain official Standards Board records, including subgroup and working group activities.
      - (e) Filing all papers and submissions prepared for or by the Standards Board, including those items generated by subgroups and working groups.
      - (f) Respond to official correspondence.
      - (g) Prepare and handle all reports, including the annual report as required by FACA.
      - (h) Acting as the Standard Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures.

## Article VII. Meetings

1. Pursuant to Sections 215(a)-(c) of HAVA, the Standards Board shall hold a meeting of its members:
  - a. At such times as it considers appropriate for the purposes of conducting such business as it considers appropriate under HAVA.
  - b. In any event, not less frequently than once every two (2) years for purposes of selecting the Executive Board.
  - c. For the purposes of voting on voluntary voting system guidelines referred to it

under Section 222 of HAVA, not less frequently than once every year.

2. Meetings shall be called by the DFO in consultation with the Executive Board.
3. The DFO shall approve the agenda for all meetings. The EAC shall distribute the agenda to Standards Board members prior to each meeting and shall publish notice of the meeting in the Federal Register as required by FACA.
4. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
5. Meetings.
  - a. Open Meetings.
    - i. Unless otherwise determined in advance, all Standards Board meetings will be open to the public.
    - ii. Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded. In such a case, the Standards Board will accept written comments as an alternative. In addition, members of the public may submit written statements to the EAC at any time.
    - iii. All materials brought before, or presented to, the Board during the conduct of an open meeting, including, but not limited to, the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
    - iv. Minutes of open meetings shall be available to the public upon request.
    - v. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public.
    - vi. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session.
  - b. Closed Meetings.
    - i. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.
    - ii. Standards Board meetings will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel a minimum of 45 days in advance of the proposed closed session.
    - iii. Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), shall be published in the Federal Register. The notice may announce the closing of all or just part

- of a meeting.
  - iv. Minutes of closed meetings shall be available to the public upon request, subject to the Freedom of Information Act (FOIA).
6. Minutes.
- a. The DFO, or his or her designee, shall assure that detailed minutes of each minute are prepared and distributed to Standards Board members.
  - b. Meeting minutes shall include the following: (1) Time, (2) date, (3) location, (4) record of persons present, including the names of Standards Board members, staff, and the names of members of the public making written or oral presentations, (5) a complete and accurate description of the matters discussed and conclusions reached, and (6) copies of all reports received, issued, or approved by the Standards Board.
  - c. All documents, reports, or other materials prepared by or for the Standards Board constitute official government records and will housed at the EAC and maintained according to the Federal Records Act.
  - d. Meeting minutes are considered part of the official government record.

### **Article VIII. Quorum and Proxy Voting**

1. Quorum:
- a. A quorum shall be established when fifty percent (50%) plus one of Standards Board members is present for a meeting or are present by proxy.
  - b. Proxy designations may be submitted in writing to the Chair up to the day of the Standards Board meeting.
2. Proxy Votes.
- a. Proxy votes may only be cast by Standards Board members, provided proxy designations have been timely filed in advance with the Chair clearly identifying the Standards Board member to cast an absent member's proxy vote.
  - b. The Chair shall appoint a proxy committee to verify the eligibility of proxy votes.
3. Voting Generally.
- a. The Standards Board shall agree to actions by majority vote of those present and voting unless otherwise specified by these bylaws.
  - b. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

### **Article IX. Committees**

In appointing members to committees, the Standards Board shall pay particular attention to ensuring diverse membership. Accordingly, the Executive Board shall do due diligence to ensure that committee members (1) affiliate with diverse parties, (2) are representative of both state and local election officials, (3) represent different states and territories, and (4) representative of both elected and appointed officials.

1. Meetings.
- a. All committees may meet informally at any time for the purpose of conducting

- their business, including telephonically or through electronic media.
2. Standing Committees.
    - a. Nominating Committee. The Nominating Committee shall:
      - i. Be comprised of five (5) members.
      - ii. Solicit nominations for the Executive Board from Standards Board members.
      - iii. Prepare and distribute to Standards Board members ballots that include all the information listed in Article V, section 1, subsection c, paragraph ii of these Bylaws.
    - b. Bylaws Committee. The Bylaws Committee shall:
      - i. Be comprised of seven (7) members.
      - ii. Submit a report with all recommended amendments to the Executive Board for a seven (7) day comment period before submitting recommendations to the Standards Board for resolution and adoption.
  3. Ad-Hoc Committees.
    - a. The Standards Board may, at any time, by majority vote, establish an ad-hoc committee.
    - b. The Standards Board member wishing to establish an ad-hoc committee must present to the Standards Board the reason(s) he/she is requesting the committee.
    - c. Once an ad-hoc committee has been established, the Executive Board shall appoint members to the ad-hoc committee.

#### **Article X. Amendments**

1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws.
  - a. The form shall require the specific language of the proposed amendment to be included, identify the author of the amendment, and be designed to elicit the rationale and impact of the proposed amendment.
2. All proposed bylaw changes must be submitted in writing to the DFO:
  - a. No later than December 1; or
  - b. Within the seventy (70) day timeframe provided by the Executive Committee.
3. After receiving proposed bylaw changes, the DFO shall forward the proposed changes to the Standards Board Bylaws Committee and the EAC's General Counsel.
  - c. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
  - d. The Bylaws Committee shall transmit a report containing the proposed bylaws to the Executive Board.
  - e. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the next meeting of the Standards Board.
3. The Executive Board shall forward all proposed changes to Standards Board members at least thirty (30) days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request that EAC post the proposed change to the bylaws and all

supporting material on EAC's website at least thirty (30) days prior to the next meeting of the Standards Board.

4. The bylaws may be amended by on a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting.

**Article XI. Expenses and Reimbursement.**

1. Expenses related to Standards Board operations will be borne by the EAC.
2. Expenditures of any kind must be approved in advance by the DFO.
3. Standards Board members shall not receive any compensation for their services, but shall be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performance of their services for the Standards Board.

**Article XII. Roberts Rules**

1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Standards Board in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Standards Board may adopt.
2. Voting procedures for the Standards Board, the Executive Board, and the subcommittees shall follow the accepted procedure, in the latest edition of Robert's Rules of Order.

**Article XIII. Effective Date**

1. These By-Laws are effective upon adoption by the Standards Board.

**Article XIV. Transition Procedures and Ratification**

1. The adoption of the bylaws has no effect on the selection, terms or appointment of the officers or members of the Standards Board, the Executive Board, or a committee of the Board serving on the effective date of these bylaws.
2. All acts of the Standards Board, the Executive Board, or a committee of the Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these bylaws.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
DFO

\_\_\_\_\_  
Date

These bylaws were last updated on \_\_\_\_\_, 20\_\_, and supersede all previous versions.

101606

# 7-19-06 Standards Board By-Laws

- Review EACA
- Standard Clauses - meeting minutes
- Standing Committees not described
- Authority to Executive Board for ad hoc committees
  - ↳ SB can appoint
  - ↳ Chair can appt. chair of ad hoc
- Intent was that Standards Committee could agree to ad hoc + exec could appoint members
- Bylaws committee by August 4th

- \* By middle of August, recommended bylaws for discussion
- 2 ~~4~~ Strikethroughs
- 3 recommended paragraphs
- 6 final version

## - Alternative meetings for Board - look @ EACA

- bylaws  
COMM  
- nominating  
VUSG  
ad hoc

IN committees section ->  
talk re: process for adding ad hoc committee





DR10TR  
TR TORRD

SOS  
Mjohnson@sos.  
idaho.gov

Standards Board Clauses

- Standing Committees Marilyn
- Re-arrange Membership section
- Amendments
- Meeting Procedures - re work

8-15-06

- send bylaws to Bartholomew before full meeting
- Jeannie - capture info from meeting system - check w/ Humanitas
- Executive Board referred to 25 members first elected -  $\Delta$  how long off before back on. 3 off 2/07, 3 off 2/09, 3 off 2/11.
- Head of Board be ex-officio of every committee
- minutes @ EAC, not elsewhere

Exec. <sup>48</sup>~~24~~ hour period  
Re solutions go to Board for comment,  
but Committees present resolutions to  
full Standards Board

UNIVERSITY of PENNSYLVANIA



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Stand Board Bylaws

- <sup>all members first elected to Exec Board</sup> When <sup>n</sup> eligible for re-election?
- Exec Board ~~has~~ <sup>Chair</sup> ex officio to all committees
- SB records kept at ~~office~~ <sup>#</sup> EAC.



Penn  
Arts & Sciences

**BYLAWS**  
**OF THE UNITED STATES ELECTION ASSISTANCE COMMISSION**  
**STANDARDS BOARD**

The Standards Board embodies the vision of Congress to forge a partnership among federal, state and local election officials whose goal is to promote public confidence in the conduct of federal elections in the United States.

**Section I. Purpose** ✓

The purpose of the Standards Board is to review the Voluntary Voting System Guidelines and the Best Practices For Voting Processes in Federal Elections, to submit its recommendations to the U.S. Election Assistance Commission (EAC), and to provide guidance and advice to EAC on a variety of topics related to the administration of elections for federal office.

*not purpose-duties* { As deemed necessary, the Standards Board may convene hearings or subcommittees to support the Board's functions. The Board and its subcommittees shall function solely as an advisory body and must comply with the Federal Advisory Committee Act (FACA).

**Section II. Authority** ✓

The Standards Board is a committee authorized and required by the Help America Vote Act of 2002 as such statute may be amended from time to time (HAVA). The Standards Board is subject to FACA, as outlined in its Charter and filed with the Congress on June 14, 2004; HAVA; and all other applicable Federal laws.

**Section III. Membership of the Standards Board** ✓

- A. Membership of the Standards Board shall be governed by Section 213 of HAVA.
- B. The chief state election official of each state shall notify the Executive Board of the Standards Board and the EAC promptly of any vacancy or change of membership of the state's representatives to the Standards Board.
- C. Two nonpartisan members from the same state shall not be deemed to be members of the same party as such term is used in Section 213(a)(3) of HAVA.

- D. Duties of the members of the Standards Board shall be governed by HAVA.

**Section IV: Executive Board**

*— Role of Board Officials*

- A. There shall be an Executive Board of the Standards Board that may act on behalf of the Standards Board between meetings of the Standards Board.
- B. Membership of the Executive Board shall be governed by Section 213(c) of HAVA.
- C. Nominations to the Executive Board shall be made in the following manner:

The Nominating Committee shall solicit nominations to the Executive Board from the membership. The solicitation shall be sent no later than December 1 before the expiration of an Executive Board member's term. Standards Board members may nominate themselves or other Standards Board members by responding to this solicitation.

Nominations shall be submitted to the DFO and shall be received no later than January 15. Nominations shall be in writing and may be submitted electronically. The solicitation shall designate the address and form for submitting nominations.

The Nominating Committee shall prepare a ballot to be distributed at the Standards Board meeting immediately following the submission deadline. The ballot shall be designed to enable the membership to select candidates based on considerations of party membership; state/local election official, geography, elected/appointed and in the case of state election officials, Secretary of State/Citizen Board. The Nominating Committee shall include a short biography of the candidates along with a description of the factors considered in designing the ballot.

For nominations for the first election following the adoption of these By-Laws (2007) there shall be two (2) positions for local election officials. For nominations for the second election following adoption of the By-Laws (2008) there shall be two (2) positions for state election officials. The number of state/local nominations shall continue to alternate in subsequent elections.

- D. Elections to the Executive Board shall be governed by Section 213(c) of HAVA and shall be made at a meeting of the Standards Board.
- E. Within 30 days of election of the Executive Board, the Executive Board members shall convene for the purposes of electing a Chair, Vice-Chair, and a Secretary. The term of the Chair, Vice-Chair, and Secretary shall be for one year. A member may not serve two consecutive terms for the

same office, *except in the case of a member serving the unexpired term of an office then the member may be elected to the same office for the succeeding term.*

F. The duties of the Chair shall include:

1. To preside at all meetings of the Executive Board.
2. To preside at all meetings of the Standards Board.
3. To appoint the chair of standing committees and any ad hoc committees of the Standards Board. The current standing committees are the Nominating Committee which shall be comprised of five (5) members and the By-Laws Committee which shall be comprised of seven (7) members.
4. To establish the agenda for meetings of the Executive Board in consultation with the EAC.
5. To establish the agenda for meetings of the Standards Board in consultation with the EAC.
6. To call meetings of the Executive Board in consultation with the EAC.
7. To call meetings of the Standards Board in consultation with the EAC.

G. The duties of the Vice-Chair shall be:

1. To preside at meetings of the Executive Board or perform other duties as may be appropriate in the absence of the Chair.
2. To preside at meetings of the Standards Board in the absence of the Chair.
3. To assist the Chair from time to time as the Chair may designate.
4. The Vice-Chair serves as the Chair-elect and serves as Chair for the unexpired term of the Chair if a vacancy occurs.

H. The duties of the Secretary shall include:

1. To maintain minutes at meetings of the Executive Board with the assistance of the DFO.
2. To maintain the record of the minutes of the Executive Board meetings.

3. To assist the Chair at meetings.
  4. To assist the Chair from time to time as the Chair may designate.
- I. The duties of the Executive Board shall include:
1. To establish and appoint the membership of appropriate standing committees and ad hoc committees of the Standards Board by soliciting interest from the Standards Board membership.
  2. To meet as necessary to address issues of concern to the Standards Board between meetings of the Standards Board.
  3. To approve the minutes of the Executive Board meetings.
  4. To convene meetings of the Executive Board, including but not limited to, meetings by so-called conference calls utilizing such technology that allows each member to hear the comments of other members and to have their comments heard by other members.
  5. To consult with the DFO to ensure compliance with federal statutes or other standards.
  6. To attend meetings of the Executive Board, or to participate in meetings of the Executive Board when utilizing so called conference call technology, as called by the Chair or pursuant to subparagraph (8) of this subsection. Failure to attend or participate in 25% of the meetings of the Executive Board within the preceding 12 month period shall cause a vacancy on the Executive Board held by such member.
  7. To perform all duties as required under HAVA.
  8. Two members of the Executive Board shall have authority to call a meeting of the Executive Board in writing by filing the original call of the meeting with the Standards Board's Designated Federal Officer (DFO) and the purpose of the meeting shall be stated therein.
  9. A majority of the members of the Executive Board shall be present for a quorum.
  10. Actions of the Executive Board shall be made by majority vote of the full membership of the Executive Board. Proxy voting will not be allowed in Executive Board meetings. A representative of an Executive Board member may attend and participate in any and all discussions but may not vote.

11. A member of the Executive Board may be removed from the Executive Board by two-thirds vote of the Standards Board at a meeting of the Standards Board.
12. In the event of a vacancy in the Executive Board the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next meeting of the Standards Board.
13. The Executive Board shall promptly provide to the members of the Standards Board all guidelines proposed to be adopted pursuant to Section 222(b)(3) of HAVA.
14. The recommendations made by the Executive Board to the Standards Board pursuant to Section 222(b)(3) shall include an appendix of any and all dissenting comments received from Executive Board members.
15. Such other duties as may be delegated to the Executive Board by the Standards Board from time to time.

**J. The duties of the DFO shall be:**

1. To serve as the government's agent for all matters related to the Standards Board's activities.
2. To approve or call the meeting of the Standards Board.
3. To approve agendas proposed by the Executive Committee of the Standards Board.
4. To attend all meetings of the Standards Board and Executive Board of the Standards Board.
5. To adjourn the meetings when such adjournment is in the public interest.
6. To provide adequate staff support to the Standards Board, including the performance of the following functions:
  - a. Notifying members of the time and place for each meeting.
  - b. Maintaining records of all meetings, including subgroup or working group activities, as required by law.
  - c. Maintaining the roll.

of Information Act (FOIA). The minutes will include the following: the time, date and place of the Standards Board meeting; a record of the persons present (including the names of Standards Board members, names of staff, and the names of members of the public from whom written or oral presentations were made); a complete and accurate description of the matters discussed and conclusions reached; and copies of all reports received, issued or approved by the Board.

All documents, reports, or other materials prepared by, or for, the Standards Board constitute official government records and will be maintained according to the Federal Records Act.

- F. Unless otherwise determined in advance, all meetings of the Standards Board will be open to the public. Once an open meeting has begun, it will not be closed unless prior approval of the closure has been obtained and proper notice of the closed session has been given to the public. All materials brought before, or presented to, the Board during the conduct of an open meeting, including the minutes of the proceedings of the previous open meeting, will be available to the public for review or copying at the time of the scheduled meeting.

Members of the public may attend any meeting or portion of a meeting that is not closed to the public and may, at the determination of the Chair, offer oral comment at such meeting. The Chair may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded and will invite written comment as an alternative. Members of the public may submit written statements to the EAC at any time.

- G. Meetings of the Standards Board will be closed only in limited circumstances and in accordance with applicable law. The Standards Board must obtain prior approval to conduct a closed session. Requests for closed meetings must be submitted to EAC's Office of General Counsel 45 days in advance of the proposed closed session.

Where the DFO, in conjunction with the Office of General Counsel, has determined in advance that discussions during a Standards Board meeting will involve matters about which public disclosure would be harmful to the interests of the government, industry, or others, an advance notice of a closed meeting, citing the applicable exemptions of the Government in the Sunshine Act (GISA), will be published in the Federal Register. The notice may announce the closing of all or just part of a meeting. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Chair will order such discussion to cease and will schedule it for closed session. Notices of closed meetings will be published in the Federal Register at least 15 calendar days in advance.



## Section VI: Voting

- A. Actions taken by the Standards Board shall be by majority vote of those present and voting unless otherwise specified in these bylaws.
- B.
  - 1. Proxy designations must be submitted in writing to the Chair up to the day of the meeting of the Standards Board.
  - 2. Proxy votes may be cast by members of the Standards Board or other designee provided the proxy designations have been timely filed in advance with the Chair clearly identifying the Board member or other designee to cast his proxy vote.
  - 3. The Chair shall appoint a proxy committee to verify eligibility of proxy votes.
- C. Voting procedures for the Standards Board, the Executive Board, and the subcommittees will follow the accepted procedure in the latest edition of Robert's Rules of Order. Votes by the Standard Board on recommendations to EAC shall have the ayes, nays, and abstentions recorded.

## Section VII: Bylaws

### A. General

- 1. The general membership of the EAC's Standards Board shall have the exclusive right to repeal and/or amend the organization's bylaws.
- 2. The bylaws may be amended by a two-thirds vote of the members present and voting at any Standards Board meeting, for which legal notice has been given to the Standards Board, where a quorum is present, and when at least 30 days prior notice of the vote has been given to the Standards Board members.

### B. Procedures

- 1. The Standards Board's Bylaws Committee shall promulgate a form for proposing an amendment to the Standards Board's Bylaws. The form shall require the specific language of the proposed amendment to be included, shall identify the author of the amendment, and shall be designed to elicit the rationale and impact statement.
- 2. Proposed changes to the Standards Board's bylaws submitted fewer than 60 days prior to a scheduled meeting of the Standards Board shall be deferred until the meeting following that meeting of the Standards Board.

3. Proposed changes to the Standards Board's Bylaws shall be submitted to the Standards Board's Designated Federal Officer who shall then expeditiously forward the proposed changes to the Standard's Board's Bylaws Committee and to the EAC's General Counsel.
4. The General Counsel shall report in an expeditious manner to the Bylaws Committee and the Executive Board whether or not a proposed change to the Bylaws is consistent with federal law and/or rules.
5. The Standards Board's Bylaws Committee shall prepare and forward to the Standards Board's Executive Committee the General Counsel's report on the legality of the proposed change, an analysis of the impact of a proposed change and a recommendation for disposition at least 45 days prior to the next Standards Board meeting.
6. The Standards Board's Executive Committee shall place the report on the proposed change to the Standards Board's Bylaws on the agenda for the meeting of the Standards Board.
7. The Standards Board's Executive Board shall forward all proposed changes along with rationale for or against the proposed change to all Standards Board members at least 35 days prior to the next meeting of the Standards Board via email and U.S. Mail to the applicable address of record on file with the EAC. The Executive Board shall request EAC post the proposed change to the bylaws and all supporting material on EAC's website at least 35 days prior to the next meeting of the Standards Board.

#### **Section VIII: Expenses and Reimbursement.**

Expenses related to the operation of the Standards Board will be borne by the EAC. Expenditures of any kind must be approved in advance by the DFO.

Members of the Standards Board will not be compensated for their services but will receive reimbursement for travel expenses and subsistence. The EAC will pay travel and per diem for non-government members at a rate equivalent to that allowable for federal employees.

#### **Section IX: Effective Date**

These By-Laws are effective upon adoption by the Standards Board.

#### **Section X: Transition Procedures and Ratification**

- A. The adoption of the By-Laws has no effect on the selection, terms or appointment of the officers or member of the Standards Board, the Executive Board, or a subcommittee of a Board serving on the effective date of these By-Laws.

**B. All acts of the Standards Board, the Executive Board or a subcommittee of a Board are hereby ratified, except to the extent that an act does not conform with a resolution adopted by the Standards Board before the effective date of these By-Laws.**

**BYLAWS OF THE U.S. ELECTION ASSISTANCE COMMISSION-  
BOARD OF ADVISORS**

**Article I: Board of Advisors, Operating Authority ✓**

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], the Board of Advisors has been granted its authority through its Charter with the U.S. Election Assistance Commission and will hereinafter be referred to as 'The Board'.

**Article II: Objectives ✓**

1. Advise the EAC through review of the voluntary voting system 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.(Exhibit A)

**Article III: Membership ✓**

1. Pursuant to HAVA Title, Section 214 (a), the Board shall consist of the following:
  - a. Two members appointed by the National Governors Association;
  - b. Two members appointed by the National Conference of State Legislatures;
  - c. Two members appointed by the National Association of Secretaries of State;
  - d. Two members appointed by the National Association of State Election Directors;
  - e. Two members appointed by the National Association of Counties;
  - f. Two members appointed by the National Association of County Recorders, Election Officials, and Clerks;
  - g. Two members appointed by the United States Conference of Mayors;
  - h. Two members appointed by the Election Center;
  - i. Two members appointed by the International Association of County Recorders, Election Officials, and Treasurers;
  - j. Two members appointed by the United States Commission on Civil Rights;
  - k. 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);
  - l. The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or the chief's designee;
  - m. The Chief of the Voting Section of the Civil Rights Division of the Department of Justice, or the chief's designee;
  - n. The Director of the Federal Voting Assistance Program of the Department of Defense;

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- o. Four members representing professionals in the field of science and technology, of whom
  - i. One (1) each shall be appointed by the Speaker and the Minority Leader of the House of Representatives; and
  - ii. One (1) each shall be appointed by the Majority Leader and the Minority Leader of the Senate.
- p. Eight members representing voter interests, of whom-
  - i. Four (4) members shall be appointed by the Committee on House Administration of the House of Representatives, of whom two (2) shall be appointed by the chair and two (2) shall be appointed by the ranking minority member; and
  - ii. Four (4) members shall be appointed by the Committee on Rules and Administration of the Senate, of whom two (2) shall be appointed by the chair and two (2) shall be appointed by the ranking minority members.

**Article IV: Terms of Service, Filling vacancies;**

1. Members of the Board shall serve for a term of two (2) years and may be reappointed.
2. Vacancy appointments to the Board shall be made in the same manner as the original appointment pursuant to the HAVA.

**Article V: Officers**

1. The Board shall elect a Chair, Vice-Chair and Secretary from its members.
2. All votes for officers shall be by secret ballot.
3. Each position shall last a period of one year or until the next election for a specified office.
4. Officers may serve no more than two consecutive terms for a specific office.
5. The Chair shall appoint a Parliamentarian to oversee the conduct of the meeting.
6. The election of officers shall be held at the first meeting of each calendar year.

**Article VI: Duties of Officers**

1. The Chair shall preside over meetings of the Board of Advisors; appoint all committees and serve as official liaison to the Election Assistance Commission for all resolutions and recommendations adopted by the Board; request information from any federal agencies necessary to assist with the functions of the Board of Advisors and coordinate with the Election Assistance Commission and Standards Board meeting calls pursuant to Section 222 of the HAVA; appoint committees as necessary to carry out advisory responsibilities charged under the HAVA or as otherwise assigned by the Election Assistance Commission; serve as *ex officio* member of all committees.
2. The Vice-Chair, in absence of the Chair, shall serve as official liaison to the Election Assistance Commission for all resolutions and

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recommendations adopted by the Board and preside over meetings of the Board of Advisors;

3. The Secretary shall be responsible for notifying the Board of Advisors on meeting calls; pending matters of business for the Board of Advisors; and serve as the Chair of the By-laws Committee.

#### **Article VII: Meetings**

1. Pursuant to the HAVA, the Board of Advisors shall conduct no less than two meetings per calendar year subject to forty-five (45) days advance notice of the meeting and proposed actions.
2. Other meetings may be called at the request of the Chair, or at the written request of a majority of the Board of Advisors, as necessary, subject to forty-five (45) days advance notice, which notice may be waived by agreement of a majority of the members to the extent permitted by law.
3. All meetings shall be subject to requirements within the Federal Advisory Committee Act.
4. To the extent permitted by law, meetings may be held by electronic means such as conference calls.

#### **Article VIII: Quorum and Proxy Voting**

1. Quorum shall consist of present and voting members of the Board.
2. Proxy designations must be submitted in writing to the Chair up to the day of the meeting of the Board.
3. Proxy votes may only be cast by members of the Board provided the proxy designations have been timely filed in advance with the Chair clearly identifying the Board member to cast his proxy vote.
4. The Chair shall appoint a proxy committee to verify eligibility of proxy votes.

#### **Article IX: Standing Committees**

##### **Section 1- Meetings**

- a. All committees may meet informally at anytime for the purpose of conducting their business, including telephonically or as otherwise determined necessary by the Committee Chair.

##### **Section 2-Bylaws Committee**

- a. The Secretary shall serve as Chair of the Bylaws Committee.
- b. The Bylaws Committee shall be comprised of no more than five (5) individuals, including the Secretary. Each remaining member of the committee will be appointed by the Board of Advisors by majority vote.
- c. All bylaws and resolutions presented to the association shall be referred to the committee for consideration and reported to the meeting prior to adoption.

##### **Section 3-Voting System Standards Committee**

- a. The Chair of the Voting System Standards Committee shall be appointed by the Chair of the Board of Advisors.

- b. The Chair of the Voting System Standards Committee must be acquainted with the conduct of elections and incorporation of various election technology and/or ballot design.
- c. The Committee shall be comprised of no more than eleven (11) individuals. (members)
- d. At least one (1) member, excluding the Chair, shall represent a disability advocacy group on this committee.
- e. One (1) member, excluding the Chair, shall represent each of the following:
  - i. National Association of County Recorders, Election Officials and Clerks (NACRC);
  - ii. International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT);
  - iii. National Association of Secretaries of State (NASS);
  - iv. National Association of State Election Directors (NASED);
  - v. The Election Center;
- f. The Chair shall appoint other members who are not specified in Section (e).

**Article X: Amendments**

- a. The bylaws may be amended based on a 2/3 decision of the Board.
- b. All proposed bylaw changes must be submitted to the Chair for subsequent reporting to the Bylaws committee no less than thirty (30) days prior to a meeting.
- c. All proposed bylaw changes should be submitted in writing and distributed to all members of the Advisory Board one (1) month prior to a meeting.

**Article XI: Parliamentary Authority**

- a. The parliamentary authority shall be Robert Rules of Order Newly Revised Edition.

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\*\*\* CURRENT THROUGH P.L. 109-242, APPROVED 7/19/2006 \*\*\*

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS Appx § 1

§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 1, 86 Stat. 770.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Short titles:**

Act Dec. 17, 1997, P.L. 105-153, § 1, 111 Stat. 2689, provides: "This Act may be cited as the 'Federal Advisory Committee Act Amendments of 1997'." For full classification of such Act, consult USCS Tables volumes.

**NOTES:**

**Research Guide:**

**Federal Procedure:**

- 15 Fed Proc L Ed, Freedom of Information § 38:19.
- 26 Fed Proc L Ed, Patents § 60:758.

**Annotations:**

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]).  
160 ALR Fed 483.

**Law Review Articles:**

- Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 Brook L Rev 345.
- Beatty. The FBA Responds to Problems Plaguing Implementation of the Federal Advisory Committee Act. 33 Fed B J 77, February 1986.
- Brown. Does National Anti-Hunger Coalition v Executive Committee of the President's Private Sector Survey on Cost Control Create Loop-Holes in the Advisory Committee System? 33 Fed B J 80, February 1986.

**Interpretive Notes and Decisions:**

Requirements of Federal Advisory Committee Act (5 USCS Appx §§ 1 et seq.) cannot be constitutionally applied to American Bar Association committee that advises President and Department of Justice on federal judicial nominations

Handwritten note: Check w/ Gavin or Julie -> whether Standard Board members can remove employment law question



because President alone nominates candidates for federal judgeships, role of Congress is limited to Senate's advise and consent function, purposes of requirements are served through public confirmation process, and any need for applying requirements to committee is outweighed by President's interest in preserving confidentiality and freedom of consultation in selecting nominees. *Washington Legal Foundation v. United States Dep't of Justice* (1988, DC Dist Col) 691 F Supp 483, affd (1989) 491 US 440, 105 L Ed 2d 377, 109 S Ct 2558. (criticized in *In re Richardson* (1998, BC MD La) 217 BR 479, 32 BCD 114) and (criticized in *Manshardt v Fed. Judicial Qualifications Comm.* (2005, CA9 Cal) 401 F3d 1014).

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\*\*\* CURRENT THROUGH P.L. 109-242, APPROVED 7/19/2006 \*\*\*

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS Appx § 2

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

- (1) the need for many existing advisory committees has not been adequately reviewed;
- (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;
- (3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;
- (4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;
- (5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and
- (6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

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**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 2, 86 Stat. 770.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

## Other provisions:

**Ex. Or. No. 11686 superseded.** Ex. Or. No. 11686 of Oct. 7, 1972, *37 Fed. Reg. 21421*, formerly classified as a note under this section, which related to committee management, was superseded by Ex. Or. No. 11769 of Feb. 21, 1974, *39 Fed. Reg. 7125*, formerly set out as a note under this section.

**Ex. Or. No. 11769 of Feb. 21, 1974 revoked.** Ex. Or. No. 11769 of Feb. 21, 1974, *39 Fed. Reg. 7125*; formerly classified as a note to this section, was revoked by Ex. Or. No. 12024 of Dec. 1, 1977, *42 Fed. Reg. 61445*, set out as a note to this section.

**Transfer of certain advisory committee functions.** Ex. Or. No. 12024 of Dec. 1, 1977, *42 Fed. Reg. 61445*, provided: "By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended [5 USCS Appx], *Section 301 of Title 3 of the United States Code*, *Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 USCS § 1531]*, and *Section 7 of Reorganization Plan No. 1 of 1977 [42 Fed. Reg. 56101 (October 21, 1977), 5 USCS § 903 note]*, and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977, it is hereby ordered as follows:

"Section 1. The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (*42 FR 56101*) [*5 USCS § 903 note*, and note preceding *3 USCS § 101*], of certain functions under the Federal Advisory Committee Act, as amended (*5 U.S.C. App. I*) [*5 USCS Appx.*], from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

"Sec. 2. There is hereby delegated to the Administrator of General Services all the functions vested in the President by the Federal Advisory Committee Act, as amended [*5 USCS Appx*], except that, the annual report to the Congress required by Section 6(c) of that Act [*5 USCS Appx*] shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

"Sec. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order [this note], including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

"Sec. 4. Executive Order No. 11769 of February 21, 1974 [formerly set out as a note to this section] is hereby revoked.

"Sec. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order [this note] from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

"Sec. 6. This Order [this note] shall be effective November 20, 1977."

## NOTES:

Research Guide:

Federal Procedure:

15 Fed Proc L Ed, Freedom of Information § 38:19.

Am Jur:

60 Am Jur 2d, Patents § 755.

Annotations:

Construction and application of Federal Advisory Committee Act (*5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]*). *160 ALR Fed 483*.

Law Review Articles:

Tuerkheimer. Veto by Neglect: The Federal Advisory Committee Act. *25 Am U L Rev 53, 1975*.

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev 345*.

Perritt; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. *63 Geo LJ 725, 1975*.

The Federal Advisory Committee Act. *10 Harv J Legis 217, 1973*.

O'Reilly. Advisers and Secrets: The Role of Agency Confidentiality in the Federal Advisory Committee Act. *13 N Ky L Rev 27, 1986*.

## Interpretive Notes and Decisions:

In suit alleging that task force, which included Vice President and government officials, and gave policy recommendations to President, failed to comply with Federal Advisory Committee Act, where district court entered broad discovery orders against Vice President and government officials, appellate court prematurely terminated its writ of mandamus inquiry after Vice President refused to assert executive privilege; appellate court labored under mistaken assumption that assertion of executive privilege was necessary precondition to petitioners' separation-of-powers objections. *Cheney v United States Dist. Court* (2004, US) 159 L Ed 2d 459, 124 S Ct 2576, 32 Media L R 2121, 17 FLW Fed S 447.

Where U.S. Supreme Court Justice attended duck-hunting trip with Vice President of United States, who was defendant in official-capacity suit before Court, Justice's recusal was not required or permitted, because, inter alia, case was run-of-the-mill legal dispute about administrative decision under Federal Advisory Committee Act, 5 USCS app. 1, § 1 et seq. *Cheney v United States Dist. Court* (2004) 541 US 913, 158 L Ed 2d 225, 124 S Ct 1391.

Working groups formed during post-judgment conference process concerning protection of endangered Snake River salmon were not advisory committees within meaning of FACA since they were not established by agency of federal government, rather were created by principals in preceding litigation, nor were they funded by or subject to management of federal government. *ALCOA v National Marine Fisheries Serv.* (1996, CA9 Or) 92 F3d 902, 96 CDOS 5952, 96 Daily Journal DAR 9735.

Alleged inadequate public notice at several steps in protracted approval process for siting new memorial was harmless since position of organization challenging procedure was main focus of each stage in approval process, was considered and simply did not prevail; notably, organization did not become involved in siting process despite numerous instances of adequate notice. *Friends of Iwo Jima v National Capital Planning Comm'n* (1999, CA4 Va) 176 F3d 768.

★ Advisory committee exists to advise and not to decide. *Metcalf v National Petroleum Council* (1977, App DC) 180 US App DC 31, 553 F2d 176, 7 ELR 20218.

Letter by Attorney General's Commission on Pornography to magazine publisher asking for response to accusation that its magazine was pornographic was not unlawful since, notwithstanding any misapprehension of publisher, court did believe that Commission ever threatened to use state's coercive power against publisher. *Penthouse Int'l, Ltd. v Meese* (1991, App DC) 291 US App DC 183, 939 F2d 1011, cert den (1992) 503 US 950, 117 L Ed 2d 650, 112 S Ct 1513.

National Academy of Sciences committee which produced scientific manual which included guidelines for handling and monitoring treatment of laboratory animals was "utilized" within meaning of statute since Department of Health and Human Services relied on its work product and because it was formed by National Academy of Sciences, which is quasi-public entity. *Animal Legal Defense Fund v Shalala* (1997, App DC) 322 US App DC 381, 104 F3d 424, 160 ALR Fed 777, reh, en banc, den (1997, App DC) 325 US App DC 1, 114 F3d 1209 and reh den (1997, App DC) 1997 US App LEXIS 21156 and cert den (1997) 522 US 949, 139 L Ed 2d 285, 118 S Ct 367.

Even if Federal Advisory Committee Act's requirements that agency representative approve agenda of advisory committee meeting as well as § 2's hortatory language that all matters under advisory committee's consideration should be determined by official, agency, or officer forbid advisory committee from taking any action not approved by agency representative and not included in committee's agenda, it does not mean that agency administrator or representative had duty to intervene to prevent committee from voting on resolution not on agenda. *Claybrook v Slater* (1997, App DC) 324 US App DC 145, 111 F3d 904 (criticized in *Taylor v FDIC* (1997, App DC) 328 US App DC 52, 132 F3d 753).

District court's injunction against agency's use of or reliance on report prepared by committee organized and operated in violation of FACA probably did not redress any of appellees' claimed injuries, and district court should have afforded appellees opportunity to take discovery and refine their request for equitable relief. *Natural Resources Defense Council v Pena* (1998, App DC) 331 US App DC 198, 147 F3d 1012, on remand, motion to strike den (1999, DC Dist Col) 189 FRD 4.

In suit where Vice President, and others, all defendants under Federal Advisory Committee Act suit, petitioned for writ of mandamus vacating district court's discovery orders, directing court to rule on basis of administrative record,

petitioners failed to satisfy heavy burden required to justify extraordinary remedy of mandamus as their challenges to district court's legal rulings could be fully considered on appeal following final judgment, and their claims of harm could be fully cured in district court; narrow, carefully focused discovery would fully protect Vice President; either Vice President would have no need to claim privilege, or if he did, then district court's express willingness to entertain privilege claims and to review allegedly privileged documents in camera would prevent any harm; moreover, such measures would enable district court to resolve statutory question—whether Federal Advisory Committee Act (FACA), 5 USCS App. 2, applied to energy policy commission at issue—without sweeping intrusions into *Presidency and Vice Presidency*. *In re Cheney* (2003, App DC) 357 US App DC 274, 334 F3d 1096, reh. en banc, den (2003, App DC) 2003 US App LEXIS 18831 and reh den (2003, App DC) 2003 US App LEXIS 18832 and vacated, remanded (2004, US) 159 L Ed 2d 459, 124 S Ct 2576, 32 Media L R 2121, 17 FLW Fed S 447 and (ovrld as stated in *Halmon v Jones-Lang Wootton USA* (2005, DC Dist Col) 355 F Supp 2d 239).

Federal Advisory Committee Act was aimed at eliminating useless advisory committees, strengthening independence of remaining advisory committees, and preventing advisory groups from becoming self-serving. *Consumers Union of United States, Inc. v HEW* (1976, DC Dist Col) 409 F Supp 473, affd without op (1977, App DC) 179 US App DC 280, 551 F2d 466.

Contention that advisory boards established by Taylor Grazing Act [43 USCS §§ 315 et seq.] were exempt from effect of Federal Advisory Act was without merit; in choosing to terminate all advisory committees, Congress contemplated that FAA would affect existing substantive law and that if it was later decided that a particular advisory committee was necessary, Congress would enact legislation to recharter it. *Carpenter v Morton* (1976, DC Nev) 424 F Supp 603.

Industry representatives did not constitute federal advisory committee within meaning of 5 USCS Appx § 2(2), where group of cement industry representatives who submitted proposal to Environmental Protection Agency for enforcement agreement regarding cement kiln dust was not established at request of EPA, group had no fixed membership or organized structure, and although EPA had logistical control over group, this was not substantive control amounting to utilization of group. *Huron Envtl. Activist League v United States EPA* (1996, DC Dist Col) 917 F Supp 34, 26 ELR 21085.

Animal rights organization is not granted preliminary injunction to enjoin members of U.S. delegation from participating, without complying with 5 USCS Appx §§ 1-14, in working group of experts whose objective is to develop international humane animal trapping standards, where (1) majority of members of U.S. delegation were selected by National Governors Association with no input from federal agencies, (2) only one federal official played substantive role, and where working group was formed at behest of international constituency, and (3) U.S. Trade Representative (USTR) at most indirectly facilitated formation of group, because plaintiff has not demonstrated substantial likelihood of success on merits of its claim that working group was established or utilized by USTR and is thereby subject to statute. *People for the Ethical Treatment of Animals v Barshefsky* (1996, DC Dist Col) 925 F Supp 844.

Private organization representing chemical producers did not have standing to challenge composition of National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances as violative of "fair balance" requirement of 5 USCS Appx § 2, given that committee had made no final decisions on any acute exposure guideline levels and that there was no reason to believe that committee would do anything differently with one or 2 more industry representatives serving on it. *Fertilizer Inst. v United States EPA* (1996, DC Dist Col) 938 F Supp 52, 43 Envt Rep Cas 1385 (criticized in *Northwest Ecosystem Alliance v Office of the United States Trade Representative* (1999, WD Wash) 1999 US Dist LEXIS 21689).

MSPB lacked jurisdiction of employee's IRA appeal since his employer, Defense Intelligence Agency, is not covered agency, but rather is specifically excluded from coverage of whistleblower protection provisions. *Van Werry v Merit Sys. Protection Bd.* (1993, CA) 995 F2d 1048.

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS Appx § 3

§ 3. Definitions.

For the purpose of this Act—

(1) The term "Director" ["Administrator"] means the Director of the Office of Management and Budget [Administrator of General Services].

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(3) The term "agency" has the same meaning as in *section 551(1) of title 5, United States Code*.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 3, 86 Stat. 770; Dec. 17, 1997, P.L. 105-153, § 2(a), 111 Stat. 2689.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The bracketed words "Administrator" and "Administrator of General Services" have been inserted in para. (1) of this section on the authority of Reorg. Plan No. 1 of 1977, § 5F, *42 Fed. Reg. 56101*, 91 Stat. 1634, which appears as 5 USCS § 903 note, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Or. No. 12024 of Dec. 1, 1977, *42 Fed. Reg. 61445*, which appears as a note to § 2 of this Act.

Amendments:

1997. Act Dec. 17, 1997, in para. (2), in the concluding matter, substituted "such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration." for "such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government."

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## Other provisions:

**Effective date and application of Dec. 17, 1997 amendments.** Act Dec. 17, 1997, P.L. 105-153, § 2(c), 111 Stat. 2691, provides:

"(1) In general. Except as provided in paragraph (2), this section and the amendments made by this section [redesignating § 15 of the Federal Advisory Committee Act as § 16, and adding a new § 15] shall take effect on the date of the enactment of this Act.

"(2) Retroactive effect. Subsection (a) and the amendments made by subsection (a) [amending this section] shall be effective as of October 6, 1972, except that they shall not apply with respect to or otherwise affect any particular advice or recommendations that are subject to any judicial action filed before the date of the enactment of this Act."

**NOTES:**

## Related Statutes &amp; Rules:

This section is referred to in 3 USCS § 411; 10 USCS § 1783; 12 USCS § 1441a.

## Research Guide:

## Federal Procedure:

15 Fed Proc L Ed, Freedom of Information §§ 38:19.

## Am Jur:

37A Am Jur 2d, Freedom of Information Acts § 34.

77 Am Jur 2d, United States § 29.

## Annotations:

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]). 160 ALR Fed 483.

## Law Review Articles:

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 Brook L Rev 345.

## Interpretive Notes and Decisions:

1. Advisory committees
2. Standing to challenge committee actions
3. Status of particular bodies as advisory committees

**1. Advisory committees**

Although National Petroleum Council had operated for considerable period of time prior to effective date of Federal Advisory Committee Act, it is clear that Council is advisory committee within meaning of § 3 of FACA and thus subject to Act's provisions. *Metcalf v National Petroleum Council* (1977, App DC) 180 US App DC 31, 553 F2d 176, 7 ELR 20218.

When federal administrator establishes or utilizes advisory committee, he must comply with provisions of Federal Advisory Committee Act; it makes no difference whether committee is his own creation or pre-existing group and there is nothing in regulatory scheme of Act to suggest that Congress intended to exclude organizations fitting definition of advisory committee from coverage simply because they had existence independent of agency utilizing them. *Center for Auto Safety v Cox* (1978, App DC) 188 US App DC 426, 580 F2d 689.

Federal Advisory Committee Act was not intended to apply to all amorphous, ad hoc group meetings; only those groups having some sort of established structure and defined purpose may be considered as "advisory committees" within meaning of Act. *Nader v Barody* (1975, DC Dist Col) 396 F Supp 1231.

National Academy of Sciences is not agency for purposes of Federal Advisory Committee Act in absence of any significant delegation of governmental authority, jurisdiction, administrative function or power; nor was Academy's Committee on Motor Vehicle Emissions "advisory committee" under FACA where legislative history of that Act evidences apparent intention on part of Congress to exclude from coverage groups providing advice to federal agencies pursuant to

contractual relationship and specifically committees of National Academy of Sciences. *Lombardo v Handler* (1975, DC Dist Col) 397 F Supp 792, 8 Env't Rep Cas 1084, 6 ELR 20046, aff'd without op (1976, App DC) 178 US App DC 277, 546 F2d 1043, cert den (1977) 431 US 932, 53 L Ed 2d 248, 97 S Ct 2639.

→ Legislative history of Federal Advisory Committee Act evidences apparent intention on part of Congress to exclude from coverage groups providing advice to federal agencies pursuant to contractual relationships. *Lombardo v Handler* (1975, DC Dist Col) 397 F Supp 792, 8 Env't Rep Cas 1084, 6 ELR 20046, aff'd without op (1976, App DC) 178 US App DC 277, 546 F2d 1043, cert den (1977) 431 US 932, 53 L Ed 2d 248, 97 S Ct 2639.

Meetings held between FDA officials and representatives of Cosmetic, Toiletry and Fragrance Association were not "advisory committee meetings" within meaning of § 3(2) of FACA where, inter alia, CTFA was presenting to FDA a voluntary, industry-sponsored proposal and was seeking FDA's comments and advice, rather than FDA having solicited industry and consumer viewpoints on program proposed by FDA. *Consumers Union of United States, Inc. v HEW* (1976, DC Dist Col) 409 F Supp 473, aff'd without op (1977, App DC) 179 US App DC 280, 551 F2d 466.

Federal Advisory Committee Act was intended to apply to committees created by agencies and to those committees not originally created by agencies but subsequently used by them as advisory committees; exclusion provided by § 3(2) of FACA was applicable to committees made up wholly of federal officials, and did not apply to committee consisting of both state and federal employees. *Center for Auto Safety v Tiemann* (1976, DC Dist Col) 414 F Supp 215, remanded (1978, App DC) 188 US App DC 426, 580 F2d 689.

Requirements of Federal Advisory Committee Act (5 USCS Appx §§ 1 et seq.) cannot be constitutionally applied to American Bar Association committee that advises President and Department of Justice on federal judicial nominations because President alone nominates candidates for federal judgeships, role of Congress is limited to Senate's advise and consent function, purposes of requirements are served through public confirmation process, and any need for applying requirements to committee is outweighed by President's interest in preserving confidentiality and freedom of consultation in selecting nominees. *Washington Legal Foundation v United States Dep't of Justice* (1988, DC Dist Col) 691 F Supp 483, aff'd (1989) 491 US 440, 105 L Ed 2d 377, 109 S Ct 2558 (criticized in *In re Richardson* (1998, BC MD La) 217 BR 479, 32 BCD 114) and (criticized in *Manshardt v Fed. Judicial Qualifications Comm.* (2005, CA9 Cal) 401 F3d 1014).

Department of Energy's (DOE) establishment and use of three of four challenged committees contravened Federal Advisory Committee Act, 5 USCS Appx where court reasoned that committees were advisory in nature; committees did not have capability of acting on their own and, rather, provided advice to DOE. *NRDC v Abraham* (2002, DC Dist Col) 223 F Supp 2d 162, set aside in part and remanded in part (2004, App DC) 359 US App DC 183, 353 F3d 40 and (ovrld in part as stated in *Int'l Brominated Solvents Ass'n v Am. Conf. of Governmental Indus. Hygienists, Inc.* (2005, MD Ga) 21 BNA OSHC 1018).

National Commission on Observance of International Women's Year (IWY) is not "advisory committee" subject to Federal Advisory Committee Act since there is nothing in Ex. Or. No. 11832 or Public Law 94-167 which assigns Commission any advisory functions; while it may make its own recommendations in report on National Conference of Women it submits to Congress and President, Commission was not "established" or "utilized" for this purpose; National Women's Conference, to be organized by National Commission on IWY which will, among other functions, make findings and recommendations on various subjects to be submitted through Commission's report to President is advisory committee subject to Federal Advisory Committee Act; State and regional meetings, organized under Public Law 94-167, have sole statutory purpose of selecting representatives to Conference, and since they are not required to make recommendations to IWY Commission and others, they are not "advisory committees", nor are State coordinating committees "advisory" since they have only operational role of organizing and conducting State or regional meetings and are, in effect, grantees of National Commission. (1977) 57 Comp Gen 51.

## 2. Standing to challenge committee actions

Plaintiff has standing to bring claim under Federal Advisory Committee Act where it sustains injury in fact, injury could be remedied if court invalidated committee's decision, and where interest falls within zone of interest of Federal Advisory Committee Act. *HLI Lordship Indus. v Committee for Purchase from Blind & Other Severely Handicapped* (1985, ED Va) 615 F Supp 970, rev'd on other grounds, remanded (1986, CA4 Va) 791 F2d 1136.

## 3. Status of particular bodies as advisory committees

American Bar Association's standing committee on federal judiciary, in its role of advising Justice Department

regarding potential nominees for federal judgeships; does not constitute advisory committee for purposes of FACA because literalistic reading of definition section would bring such advisory relationship within act's terms; such relationship was not within contemplation of President's executive order which governed functioning of advisory committees until FACA's passage, and FACA's legislative history does not display intent to widen such order's application to include advisory relationship between Committee and Justice Department. *Public Citizen v United States Dep't of Justice* (1989) 491 US 440, 105 L Ed 2d 377, 109 S Ct 2558 (criticized in *In re Richardson* (1998, BC MD La) 217 BR 479, 32 BCD 114) and (criticized in *Manshardt v Fed. Judicial Qualifications Comm.* (2005, CA9 Cal) 401 F3d 1014).

Group that was organized and funded at least in part by certain federal agencies to assist agencies and other agencies with developing strategies for implementing restoration projects in Florida Everglades met definition of advisory committee set forth in 5 USCS App. 2 § 3. *Miccosukee Tribe of Indians v S. Everglades Restoration Alliance* (2002, CA11 Fla) 304 F3d 1076, 33 ELR 20024, 15 FLW Fed C 976 (criticized in *Int'l Brominated Solvents Ass'n v Am. Conf. of Governmental Indus. Hygienists, Inc.* (2004, MD Ga) 20 BNA OSHC 2070).

Committee formed to recommend nominees for certain federal appointments was not advisory committee within scope of Federal Advisory Committee Act (FACA), 5 USCS App. 2 § 3, because it was not established by statute, agency, or President; moreover, it was not utilized by President for purposes of FACA, particularly since its recommendations were not solicited by President. *Manshardt v Fed. Judicial Qualifications Comm.* (2005, CA9 Cal) 408 F3d 1154.

President's Task Force on National Health Care Reform was not advisory group subject to FACA since First Lady, who was appointed to chair Task Force, was federal employee; Congress has recognized in 5 USCS § 105 that President's spouse is functional equivalent of assistant to President; and President's implicit authority to enlist his spouse in aid of discharge of his federal duties undermines claim that treating President's spouse as officer or employee would violate anti-nepotism provisions of 5 USCS § 3110. *Association of Am. Physicians & Surgeons v Clinton* (1993, App DC) 302 US App DC 208, 997 F2d 898, 21 Media L R 1705.

Group advising U.S. Sentencing Commission on environmental crimes was not subject to FACA; Congress clearly excluded Sentencing Commission from APA, which determines FACA coverage, and group was not "utilized" by DOJ, even though members of group from DOJ were likely to exercise significant influence on group's deliberations and ensuing recommendations, since group answered to Commission, not DOJ. *Washington Legal Found. v United States Sentencing Comm'n* (1994, App DC) 305 US App DC 93, 17 F3d 1446, 22 Media L R 1338, 25 ELR 21189.

Panel of experts and consumers convened by Agency for Health Care Policy and Research to develop clinical practice guideline on treatment of lower back pain for health care practitioners was not advisory committee under FACA since it was created to develop guidelines for health care practitioners, not to provide advice to federal government, and fact that federal agency used guideline to formulate policy did not make panel advisory committee. *Sofamor Danek Group v Gaus* (1995, App DC) 314 US App DC 43, 61 F3d 929, cert den (1996) 516 US 1112, 133 L Ed 2d 841, 116 S Ct 910.

Presidential legal expense trust fund created by President and his wife to defray personal legal fees and related expenses incurred by President in legal proceedings commenced after he assumed office but unrelated to any of his official duties was not "advisory committee" since its main purpose was collecting and managing funds, not giving advice, and, even assuming advice were given, it was not directed to governmental policy. *Judicial Watch v Clinton* (1996, App DC) 316 US App DC 179, 76 F3d 1232.

In case involving issue whether Task Force on National Health Care Reform was advisory committee, attorney's fee award to defendant medical associations would be reversed since evidence of government's bad faith or lack of substantial justification for its litigation position was not clear and convincing, although district court on remand might consider whether sanctions on other grounds were warranted. *Association of Am. Physicians & Surgeons, Inc. v Clinton* (1999, App DC) 337 US App DC 394, 187 F3d 655.

Task forces organized by nonprofit foundation to assist Executive Committee of Private Sector Survey, appointed pursuant to Executive Order No. 12369, to conduct in-depth reviews of Executive Branch operations and to advise President, Secretary of Commerce and heads of other Federal agencies on cost-effective management, are not advisory committees within meaning of Federal Advisory Committee Act and thus subject to same procedural requirements as Executive Committee itself, since task forces do not provide advice directly to President or any agency but advise only Executive Committee. *National Anti-Hunger Coalition v Executive Committee of President's Private Sector Survey on Cost Control* (1983, DC Dist Col) 557 F Supp 524, affd (1983, App DC) 229 US App DC 143, 711 F2d 1071.



Committee which has primarily operational activities and whose advisory capacity is secondary to operational activities, is not advisory committee; National Industries for the Severely Handicapped, as nonprofit corporation is not advisory committee since it is operational component of program which recommends commodities, services and prices for consideration and has limited advisory capacity. *HLI Lordship Indus. v. Committee for Purchase from Blind & Other Severely Handicapped* (1985, ED Va) 615 F Supp 970, revd on other grounds, remanded (1986, CA4 Va) 791 F2d 1136.

Commission on Bicentennial of the United States Constitution, created by P.L. 98-101, 97 Stat. 719, is not advisory committee since list of duties of commission do not include rendition of advice but rather include operational duties. *Public Citizen v Commission on Bicentennial of United States Constitution* (1985, DC Dist Col) 622 F Supp 753.

Six private United States citizens, each expert in nuclear physics, engineering, and systems management, informally invited by Department of Energy Secretary to examine safety of plutonium production reactor in Richland, Washington, do not constitute "advisory committee" under Federal Advisory Committee Act since (1) experts work independently and report findings alone rather than acting as a committee, and (2) legislative history indicates Act's prime concern is to prevent committees from being controlled by special interest groups, and 6 individuals gained no selfish advantage by serving on advisory panel. *Natural Resources Defense Council, Inc. v Herrington* (1986, DC Dist Col) 637 F Supp 116.

Expert panel of scientists is advisory committee subject to balanced membership and public meeting requirements of Federal Advisory Committee Act (5 USCS Appx §§ 1 et seq.), where FDA solicited bids for contract to provide it with counsel on important future issues concerning safety of food and cosmetics, and group awarded contract suggested and was subsequently ordered by FDA to assemble expert panel to prepare report to contractor which would review it and then report to FDA, because material facts demonstrate that expert panel was "established" by and is being "utilized" by FDA within meaning of Act. *Food Chemical News v Young* (1989, DC Dist Col) 709 F Supp 5, 35 CCP P 75632, revd (1990, App DC) 283 US App DC 344, 900 F2d 328, cert den (1990) 498 US 846, 112 L Ed 2d 99, 111 S Ct 132.

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS Appx § 4

§ 4. Applicability; restrictions

- (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.
- (b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—
- (1) the Central Intelligence Agency; or

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(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

**HISTORY:**

(Oct. 6, 1972; P.L. 92-463, § 4, 86 Stat. 771.)

**NOTES:**

Research Guide:

Federal Procedure:

15 Fed Proc L Ed, Freedom of Information §§ 38:19.

Am Jur:

37A Am Jur 2d, Freedom of Information Acts § 34.

Annotations:

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]. 160 ALR Fed 483.

Interpretive Notes and Decisions:

Plain meaning of Federal Advisory Committee Act § 4(c) is clear; as proviso, it should be construed narrowly as including state and local committees functioning at state or local level and not at federal level. *Center for Auto Safety v Cox* (1978, App DC) 188 US App DC 426, 580 F2d 689.

Action by manufacturer of prescription medical devices used in spinal surgery, seeking to bar government from publishing its Clinical Practice Guideline (CPG) for acute low-back pain on ground that CPG was generated by panel convened in violation of Federal Advisory Committee Act (5 USCS Appx), is dismissed, where CPG panels are established by agency, not by statute, because panels do not fall within scope of Act. *Sofamor Danek Group v Clinton* (1994, DC Dist Col) 870 F Supp 379.

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## 5 USCS Appx § 5

## § 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

- (1) contain a clearly defined purpose for the advisory committee;
- (2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;
- (3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;
- (4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and
- (5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

**HISTORY:**

(Oct. 6, 1972, § 5, 86 Stat. 771.)

**NOTES:**

Research Guide:

Am Jur:

*77 Am Jur 2d, United States § 29.*

## Annotations:

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]). *160 ALR Fed 483.*

## Law Review Articles:

Tuerkheimer. Veto by Neglect: The Federal Advisory Committee Act. *25 Am U L Rev 53, 1975.*

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev 345.*

Perritt; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. *63 Geo L J 725, 1975.*

The Federal Advisory Committee Act. *10 Harv J Legis 217, 1973.*

## Interpretive Notes and Decisions:

1. Balanced membership requirement
2. Review of committee actions
3. Standing to challenge committee actions

### 1. Balanced membership requirement

Individual nominees' challenge, to Secretary of Department of Interior's appointment of members to resource advisory councils, was dismissed in part because balanced membership requirement of 5 USCS app. 2 § 5(b)(3) did not provide meaningful standard of review for court to apply. *Colo. Envtl. Coalition v Wenker* (2004, CA10 Colo) 353 F3d 1221.

Executive Committee of Private Sector Survey, appointed by President pursuant to Executive Order No. 12369, is "balanced" within meaning of § 5 of Federal Advisory Committee Act (5 USCS Appx), notwithstanding that membership of 150-member committee includes no public interest advocates and no beneficiaries of Federal food assistance programs, since (1) purpose of Survey is to apply to Federal programs expertise of leaders in private sector with special abilities to give detailed advice on cost-effective management of large organizations, which purpose would not necessarily be advanced by inclusion of public interest groups or members of public receiving Federal benefits among membership of committee, and (2) Act does not explain meaning of term "balanced". *National Anti-Hunger Coalition v Executive Committee of President's Private Sector Survey on Cost Control* (1983, DC Dist Col) 557 F Supp 524, affd (1983, App DC) 229 US App DC 143, 711 F2d 1071.

Membership of National Advisory Committee on Microbiological Criteria for Foods is properly balanced under § 5(b) of Federal Advisory Committee Act (5 USCS Appx § 5(b)), notwithstanding claim that "consumer representative or advocate" has not been appointed; food industry employment or consulting background of several members is not to be equated with anti-regulatory sentiments. *Public Citizen v National Advisory Committee on Microbiological Criteria for Foods* (1988, DC Dist Col) 708 F Supp 359, affd (1989, App DC) 281 US App DC 1, 886 F2d 419.

National Women's Conference does not violate "balance" requirements of Federal Advisory Committee Act since Commission regulations on organization and conduct of State meetings, where Conference delegates are selected, afford extremely broad basis for participation and leaves degree of "balance" essentially to participants through normal democratic process; objective of balance goes only to composition of voting bodies rather than support or opposition on any given issue. (1977) 57 Comp Gen 51.

### 2. Review of committee actions

Federal Advisory Committee Act provides for 3 separate sources of review to insure that network of federal advisory committees is operating as effectively and efficiently as possible; first source of review is Congress itself under FACA § 5(a), second source is Director of Office of Management and Budget under authority of § 7(b), and third is head of federal agency utilizing advisory committee who monitors performance of committee under authority of § 8. *Metcalf v National Petroleum Council* (1977, App DC) 180 US App DC 31, 553 F2d 176, 7 ELR 20218.

State environmental protection agency may not challenge recommendation of FDA advisory committee on grounds that advisory committee was not fairly balanced as required under 5 USCS Appx §§ 5(b)(2), (c), where committee recommended that Congress pass legislation preempting additional and conflicting state requirements, because no judicially manageable standards exist to review fair balance requirement. *Public Citizen v HHS* (1992, DC Dist Col) 795 F Supp 1212 (criticized in *Northwest Ecosystem Alliance v Office of the United States Trade Representative* (1999, WD Wash) 1999 US Dist LEXIS 21689).

### 3. Standing to challenge committee actions

Mine owners had standing to challenge defendant National Institution for Occupational Safety and Health's and others' alleged violation of Federal Advisory Committee Act by employing NIOSH's Board of Scientific Counselors (BSC) to peer-review protocol to govern planned study of health effects of exposure to diesel exhaust and filing BSC's charter with wrong congressional committee, since it suffered injury in fact in that it prevented effective congressional monitoring of BSC and mines had compelling interest in ensuring that study's results were accurate. *Cargill, Inc. v United States* (1999, CA5 La) 173 F3d 323, 18 BNA OSHC 1685, 1999 CCH OSHD P 31814.

In action brought by United States senator under Federal Advisory Committee Act, seeking to enjoin operation of National Petroleum Council on ground that council was illegally dominated by petroleum industry, 140 members out of 155 being affiliated with petroleum industry, district court dismissal for lack of standing by plaintiff would be affirmed, plaintiff's allegations that council's deficient advice would result in governmental policies unfavorable to consumers and to environment being purely speculative and conjectural, and his complaint that poor advice from Council would impede his efforts to produce best possible legislative product being insufficiently specific. *Metcalf v National Petroleum Council* (1977, App DC) 180 US App DC 31, 553 F2d 176, 7 ELR 20218.

Members of group denied membership on Executive Committee of Private Sector Survey, appointed by President pursuant to Executive Order No. 12369, to conduct in-depth reviews of Executive Branch Operations and to advise President, Secretary of Commerce and heads of other Federal agencies on cost-effective management have standing to challenge membership of Executive Committee on grounds of lack of "balance" as required by § 5 of Act. *National Anti-Hunger Coalition v Executive Committee of President's Private Sector Survey on Cost Control* (1983, DC Dist Col) 557 F Supp 524, affd. (1983, App. DC) 229 US App DC 143, 711 F2d 1071.

Nonprofit public interest law center has standing to assert claim against American Bar Association Standing Committee under § 5(b) of Federal Advisory Committee Act, where Committee contends center's interest in its activities of reviewing professional qualifications of and rating possible federal judgeship nominees is too remote and speculative to confer standing, because center's claim that defendant is regularly consulting with liberal public interest groups to exclusion of conservative public interest organizations like itself charges that it has been "directly affected" by lack of balance on Committee. *Washington Legal Foundation v American Bar Assn. Standing Committee on Federal Judiciary* (1986, DC Dist Col) 648 F Supp 1353.

"Stop ERA" group lacked standing to protest alleged violation by National Commission on Observance of International Women's Year of FACA § 5(b)(2) by support of Equal Rights Amendment. *Mulqueeny v National Com. on Observance of International Women's Year, 1975* (1977, CA7 Ill) 549 F2d 1115.

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
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5 USCS Appx § 6

§ 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

- (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.
- (b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.
- (c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated

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annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such a report a statement that such information is excluded.

**HISTORY:**

(Oct. 6, 1972, § 6, 86 Stat. 772; Dec. 21, 1982, P.L. 97-375, Title II, § 201(c) in part, 96 Stat. 1822.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Amendments:**

1982. Act Dec. 21, 1982 (effective 7/1/83, as provided by § 201(c) in part of such Act), in subsec. (c), substituted "The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year." for "The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted [enacted Oct. 6, 1972]), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year."

**Other provisions:**

**Termination of reporting requirements.** For termination, effective May 15, 2000, of provisions of subsec. (c) of this section relating to periodic reports to Congress, see § 3003 of Act Dec. 21, 1995, P.L. 104-66, which appears as 31 USCS § 1113 note. See also page 173 of House Document No. 103-7.

**NOTES:****Research Guide:****Am Jur:**

77 *Am Jur 2d, United States* § 29.

**Annotations:**

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]). 160 *ALR Fed* 483.

**Law Review Articles:**

Tuerkheimer. Veto by Neglect: The Federal Advisory Committee Act. 25 *Am U L Rev* 53, 1975.

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 *Brook L Rev* 345.

Perritt; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. 63 *Geo L J* 725, 1975.

The Federal Advisory Committee Act. 10 *Harv J Legis* 217, 1973.

**Interpretive Notes and Decisions:**

Group that was organized by federal agencies to render advise over restoration projects was advisory committee that was subject to obligations of Federal Advisory Committee Act, 5 USCS App. 2 § 1 et seq. *Miccosukee Tribe of Indians v S. Everglades Restoration Alliance* (2002, CA11 Fla) 304 F3d 1076, 33 ELR 20024, 15 FLW Fed C 976 (criticized in *Int'l Brominated Solvents Ass'n v Am. Conf. of Governmental Indus. Hygienists, Inc.* (2004, MD Ga) 20 BNA OSHC 2070).

Although under § 6 of Federal Advisory Committee Act, there do not appear to be any statutory criteria for selection of State Coordinating Committees, it could not be argued reasonably that National Commission on Observance of International Woman's Year had not done responsible job of setting up Illinois State Coordinating Committee, even though it might be true that of 59 members, only one was in outspoken opposition to ratification of Equal Rights Amendment.

Commission had sought nominations from many diverse organizations and individuals, and asserted that in selection process there was also conscious attempt to designate people with range of views on some of more controversial issues. *Hall v Siegel (1977, SD Ill) 467 F Supp 750.*

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\*\*\* CURRENT THROUGH P.L. 109-242, APPROVED 7/19/2006 \*\*\*

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

5 USCS Appx § 7

§ 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Director [Administrator] shall establish and maintain within the Office of Management and Budget [General Services Administration] a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director [Administrator] shall, immediately after the enactment of this Act [enacted Oct. 6, 1972], institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Director [Administrator] may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's [Administrator's] review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director [Administrator] shall carry out a similar review annually. Agency heads shall cooperate with the Director [Administrator] in making the reviews required by this subsection.

(c) The Director [Administrator] shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director [Administrator] shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d) (1) The Director [Administrator], after study and consultation with the Civil Service Commission [Director of the

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Office of Personnel Management], shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under *section 5332 of title 5, United States Code*;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence; as authorized by *section 5703 of title 5, United States Code*, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under *section 3102 of title 5, United States Code*, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5,

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director [Administrator] shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

#### **HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 7, 86 Stat. 772; Dec. 12, 1980, P.L. 96-523, § 2, 94 Stat. 3040.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

##### Explanatory notes:

The bracketed words "Administrator", "General Services Administration", and "Administrator's" are inserted in this section on the authority of Reorg. Plan No. 1 of 1977, § 5F, 42 *Fed. Reg. 56101*, 91 Stat. 1634, which appears as 5 *USCS* § 903 note, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Or. No. 12024 of Dec. 1, 1977, 42 *Fed. Reg. 61445*, which appears as a note to § 2 of this act.

The bracketed words "Director of the Office of Personnel Management" are inserted in subsec. (d)(1) of this section, because, all functions vested by statute in the Civil Service Commission, except as otherwise specified, were transferred to the Director of the Office of Personnel Management by Reorg. Plan No. 2 of 1978, 43 *Fed. Reg. 36037*, 92 Stat. 3784, located at 5 *USCS* § 1101 note, effective Jan. 1, 1979, as provided by Ex. Or. No. 12107 of Dec. 28, 1978, § 1-102, 44 *Fed. Reg. 1055*, located at 5 *USCS* § 1101 note.

##### Amendments:

1980. Act Dec. 12, 1980 (effective 60 days after enactment on 12/12/80, as provided by § 3 of such Act, which appears as 5 *USCS* § 3102 note), in subsec. (d)(1), in subpara. (A), deleted "and" following the semicolon, in subpara. (B), substituted "; and" for the concluding period, and added subpara. (C).

##### Other provisions:

**GS 16-18 pay rates.** Act Nov. 5, 1990, P.L. 101-509, Title V, § 529 [Title I, § 101(c)-(e)], 104 Stat. 1442, which appears as 5 *USCS* § 5376 note, provides for the construction of references to rates of pay for GS 16-18 employees.

#### **NOTES:**

##### Related Statutes & Rules:

This section is referred to in 5 *USCS* § 568.



Research Guide:

Am Jur:

78 *Am Jur 2d, War* § 51.

Annotations:

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]). 160 *ALR Fed* 483.

Law Review Articles:

Tuerkheimer. Veto by Neglect: The Federal Advisory Committee Act. 25 *Am U L Rev* 53, 1975.

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 *Brook L Rev* 345.

Perrit; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. 63 *Geo L J* 725, 1975.

The Federal Advisory Committee Act. 10 *Harv J Legis* 217, 1973.

Interpretive Notes and Decisions:

Federal Advisory Committee Act provides for 3 separate sources of review to insure that network of federal advisory committees is operating as effectively and efficiently as possible; first source of review is Congress itself under FACA § 5(a), second source is Director of Office of Management and Budget under authority of § 7(b), and third is head of federal agency utilizing advisory committee who monitors performance of committee under authority of § 8. *Metcalf v National Petroleum Council* (1977, *App DC*) 180 *US App DC* 31, 553 *F2d* 176, 7 *ELR* 20218.

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES

TITLE 5—APPENDIX

FEDERAL ADVISORY COMMITTEE ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS Appx § 8

§ 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director [Administrator] under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory

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committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of *section 552 of title 5, United States Code*, with respect to such reports, records, and other papers.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 8, 86 Stat. 773.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Explanatory notes:**

The bracketed word "Administrator", referring to the Administrator of General Services, is inserted in subsec. (a) of this section on the authority of Reorg. Plan No. 1 of 1977, § 5F, *42 Fed. Reg. 56101*, 91 Stat. 1634, which appears as *5 USCS § 903* note, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Or. No. 12024 of Dec. 1, 1977, *42 Fed. Reg. 61445*, which appears as a note to § 2 of this act.

**NOTES:**

**Research Guide:**

**Annotations:**

Construction and application of Federal Advisory Committee Act (*5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]*). *160 ALR Fed 483*.

**Law Review Articles:**

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev 345*.

**Interpretive Notes and Decisions:**

Federal Advisory Committee Act provides for 3 separate sources of review to insure that network of federal advisory committees is operating as effectively and efficiently as possible; first source of review is Congress itself under FACA § 5(a), second source is Director of Office of Management and Budget under authority of § 7(b), and third is head of federal agency utilizing advisory committee who monitors performance of committee under authority of § 8. *Metcalf v National Petroleum Council (1977, App DC) 180 US App DC 31, 553 F2d 176, 7 ELR 20218*.

Nonprofit public interest law center may not sue American Bar Association Standing Committee under § 8(b) of Federal Advisory Committee Act (5 USCS Appx I), where Committee might be advisory committee by reason of its assistance to President and Justice Department through review and rating of possible federal judgeship nominees, because Act authorizes private cause of action against government but not against private preexisting group advising government. *Washington Legal Foundation v American Bar Asso. Standing Committee on Federal Judiciary (1986, DC Dist Col) 648 F Supp 1353*.

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

*5 USCS Appx § 9*

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

- (1) specifically authorized by statute or by the President; or
- (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director [Administrator], with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director [Administrator], in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

- (A) the committee's official designation;
- (B) the committee's objectives and the scope of its activity;
- (C) the period of time necessary for the committee to carry out its purposes;
- (D) the agency or official to whom the committee reports;
- (E) the agency responsible for providing the necessary support for the committee;
- (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (G) the estimated annual operating costs in dollars and man-years for such committee;
- (H) the estimated number and frequency of committee meetings;
- (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
- (J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 9, 86 Stat. 773.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The bracketed word "Administrator" referring to the Administrator of General Services, is inserted in subsecs. (a)(2) and (c) of this section on the authority of Reorg. Plan No. 1 of 1977, § 5F, 42 *Fed. Reg.* 56101, 91 Stat. 1634, which appears as 5 *USCS* § 903 note, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Or. No. 12024 of Dec. 1, 1977, 42 *Fed. Reg.* 61445, which appears as a note to § 2 of this act.

**NOTES:**

Research Guide:

Annotations:

Construction and application of Federal Advisory Committee Act (5 *U.S.C.A. App.* 2 §§ 1-15 [5 *USCS Appx* §§ 1-15]. 160 *ALR Fed* 483.

Law Review Articles:

Tuerkheimer. Veto by Neglect: The Federal Advisory Committee Act, 25 *Am U L Rev* 53, 1975.

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 *Brook L Rev* 345.

Perritt; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. 63 *Geo L J* 725, 1975.

The Federal Advisory Committee Act. 10 *Harv J Legis* 217, 1973.

Interpretive Notes and Decisions:

1. Generally 2. Function of committee 3. Effect of failure to comply with formation requirements 4. Judicial review

**1. Generally**

Before advisory committee can begin to function, it must be formally chartered in accordance with § 9(c) of Federal Advisory Committee Act and charter must contain, inter alia, information concerning committee's objectives and scope of its operations and duties; committees are chartered to one federal agency although such committee can serve as advisory committee to other federal agencies. *Metcalf v National Petroleum Council* (1977, App DC) 180 *US App DC* 31, 553 *F2d* 176, 7 *ELR* 20218.

**2. Function of committee**

Presence of retired Supreme Court Justice and active circuit judge on advisory committee charged with investigating and submitting report on organized crime to President, did not prevent committee from performing its functions since inter alia, (1) judges' presence did not prevent committee from conducting hearings, preparing reports or making recommendations for legislation, (2) committee does not prosecute, indict, or legislate, and (3) while committee was empowered to issue subpoenas, enforcement of subpoenas was reserved to courts; that committee member is a judge does not inhibit use of powers imposed on members, or excuse duty to submit advisory report, ability to make findings and recommendations would be the same in absence of any judge's participation. *In re President's Comm'n on Organized Crime etc.* (1986, CA3 NJ) 783 *F2d* 370.

Advisory committee exists to advise and not to decide: *Metcalf v National Petroleum Council* (1977, App DC) 180 *US App DC* 31, 553 *F2d* 176, 7 *ELR* 20218.

Under 5 *USCS* Appendix I § 9(b) advisory committee may be utilized solely for advisory functions but under 15 *USCS* § 776(a) Department of Energy may be able to use advisory committee to perform some operational tasks such as drafting of National Energy Policy Plan pursuant to 42 *USCS* § 7321. (1981) 60 *Comp Gen* 386.

**3. Effect of failure to comply with formation requirements**

When federal agency utilizes advisory committee for purpose of obtaining advice, agency must charter and establish committee in compliance with provisions of § 9 of Federal Advisory Committee Act; however, failure to comply with such requirements cannot be employed as subterfuge for avoiding public access requirements. *Food Chemical News, Inc. v Davis* (1974, DC Dist Col) 378 *F Supp* 1048.

**4. Judicial review**

Decision of whether advisory committee, terminated by § 14 of Federal Advisory Committee Act should be re-established is discretionary with particular administrative agency and cannot be reviewed by district court. *Hiatt Grain & Feed, Inc. v Bergland* (1978, DC Kan) 446 F Supp 457, 11 Env't Rep Cas 1961, aff'd (1979, CA10 Kan) 602 F2d 929, cert den (1980) 444 US 1073, 62 L Ed 2d 755, 100 S Ct 1019.

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TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

5 USCS Appx § 10

§ 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a) (1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director [Administrator] shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director [Administrator] may prescribe.

(b) Subject to *section 552 of title 5, United States Code*, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of *section 552b of title 5, United States Code*. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related

matters as would be informative to the public consistent with the policy of *section 552(b) of title 5, United States Code*.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committee), with an agenda approved by such officer or employee.

#### **HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 10, 86 Stat. 774; Sept. 13, 1976, P.L. 94-409, § 5(c), 90 Stat. 1247.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

##### **Explanatory notes:**

The bracketed word "Administrator" referring to the Administrator of General Services, is inserted in subsec. (a)(2) and (3) of this section on the authority of Reorg. Plan No. 1 of 1977, § 5F, *42 Fed. Reg. 56101*, 91 Stat. 1634, which appears as *5 USCS § 903* note, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Or. No. 12024 of Dec. 1, 1977, *42 Fed. Reg. 61445*, which appears as a note to § 2 of this act.

##### **Amendments:**

1976. Act Sept. 13 (effective 180 days after enactment on 9/13/76, as provided by § 6 of such Act, which appears as *5 USCS § 552b* note), 1976, in subsec. (d), substituted the first sentence for the one which read: "Subsections (a)(1) and (a)(3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in *section 552(b) of title 5, United States Code*."

#### **NOTES:**

##### **Related Statutes & Rules:**

This section is referred to in *5 USCS § 566; 15 USCS § 4806; 19 USCS § 2155, 2605; 20 USCS § 9011; 30 USCS § 1229; 42 USCS §§ 6273, 7704; 46 USCS §§ 4508, 9307; 49 USCS § 30306*.

##### **Research Guide:**

##### **Federal Procedure:**

15 Fed Proc L Ed, Freedom of Information §§ 38:19, 20.

##### **Am Jur:**

37A Am Jur 2d, Freedom of Information Acts § 35.

##### **Annotations:**

Construction and application of Federal Advisory Committee Act (*5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]*). *160 ALR Fed 483*.

##### **Law Review Articles:**

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev. 345*.

Perritt; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. *63 Geo L J 725, 1975*.

The Federal Advisory Committee Act. *10 Harv J Legis 217, 1973*.

##### **Interpretive Notes and Decisions:**

## 1. Generally 2. Closed meetings 3. Relationship with Freedom of Information Act

**1. Generally**

Under Federal Advisory Committee Act Congress has determined simply that when federal executive official utilizes advisory committee to assist him in discharging his responsibilities, in most instances he must do so openly and publicly; advisory committee has no First Amendment right to have administrator keep its communications secret. *Center for Auto Safety v Cox* (1978, App DC) 188 US App DC 426, 580 F2d 689.

Even if Federal Advisory Committee Act's requirements that agency representative approve agenda of advisory committee meeting as well as § 2's hortatory language that all matters under advisory committee's consideration should be determined by official, agency, or officer forbid advisory committee from taking any action not approved by agency representative and not included in committee's agenda, it does not mean that agency administrator or representative had duty to intervene to prevent committee from voting on resolution not on agenda. *Claybrook v Slater* (1997, App DC) 324 US App DC 145, 111 F3d 904 (criticized in *Taylor v FDIC* (1997, App DC) 328 US App DC 52, 132 F3d 753).

Two separate "informal" meetings with consumer and distilled spirits industry representatives relative to drafting proposed regulations of Bureau of Alcohol, Tobacco and Firearms of Treasury Department on ingredient labeling of distilled spirits were meetings of "advisory committees" used by director of bureau to obtain advice within the meaning of Federal Advisory Committee Act and therefore "open to the public". *Food Chemical News, Inc. v Davis* (1974, DC Dist Col) 378 F Supp 1048.

Court has no authority to order federal officials to convene Energy Conservation Advisory Committee and Solar Energy Advisory Committee specific number of times, or to direct committees themselves to issue reports to federal officials, addressing their recommendations to Solar Energy and Energy Conservation Bank, since Federal Advisory Committees, pursuant to § 10(f) may meet only at call of designated officer or employee of Federal Government, who is not required to call meetings if he does not wish to, and since there is no basis for court to direct meetings, there is also no basis to direct committees to report on their activities, since activities and reports thereon are for agency to request or not, as case may be. *Dabney v Reagan* (1982, SD NY) 559 F Supp 861.

Preliminary injunction is granted to prevent President's Task Force on National Health Care Reform from conducting meetings in violation of Federal Advisory Committee Act (FACA) (5 USCS Appx §§ 1 et seq.), but §§ 10(a)(1), 10(a)(3), and 10(c) are not applicable to meetings held for purpose of formulating advice and recommendations for President, because First Lady (chairperson of task force) is not federal officer or employee, making task force subject to FACA under § 3(2), but forced exposure of "recommendation" meetings under FACA provisions is unconstitutional as violation of separation of powers principles. *Association of Am. Physicians & Surgeons v Clinton* (1993, DC Dist Col) 813 F Supp 82, 21 Media L R 1225, revd, remanded (1993, App DC) 302 US App DC 208, 997 F2d 898, 21 Media L R 1705.

Nonprofit corporation is not entitled to records pertaining to costs of interdepartmental working group of health-care reform task force, where records were intended to help Congress in its oversight function, because such records are not within scope of § 10(b) of the Federal Advisory Committee Act and because nothing in statute or regulations creates right of public access to such records. *Association of Am. Physicians & Surgeons v Clinton* (1994, DC Dist Col) 879 F Supp 103, dismd (1994, DC Dist Col) 879 F Supp 106.

**2. Closed meetings**

Examination of legislative history of Federal Advisory Committee Act clearly indicates that although standard of openness and public inspection was to be applied liberally, it was intention of Congress to provide for closed deliberations under certain conditions, one of which is stated FACA § 10(d). *Aviation Consumer Action Project v Washburn* (1976, App DC) 175 US App DC 273, 535 F2d 101.

Broad application of FACA § 10(d) exemption to include all deliberative conversations to committee meetings is clearly contrary to Congressional intent and policy of Federal Advisory Committee Act. *Nader v Dunlop* (1973, DC Dist Col) 370 F Supp 177.

Agency's failure to charter and establish advisory committee in compliance with all terms of Federal Advisory Committee Act cannot be employed as subterfuge for avoiding public access requirements of FACA § 10. *Food Chemical News, Inc. v Davis* (1974, DC Dist Col) 378 F Supp 1048.

Plaintiff whose request for transcript of advisory committee meetings, which were not open to public as required by FACA § 10, was denied, has standing to sue for their production. *Center for Auto Safety v Tiemann* (1976, DC Dist Col) 414 F Supp 215, remanded (1978, App DC) 188 US App DC 426, 580 F2d 689.

Environmental group's challenge to EPA's refusal to open to public meetings of Governors' Forum on Environmental Management is denied, where forum made up of 9 state governors meets to help coordinate state and federal efforts to maintain clean and safe drinking water, because, even though forum was established to advise or assist EPA, it is not "advisory committee" subject to public meeting requirements of 5 USCS Appx §§ 9 and 10 since governors also act operationally as independent chief executives in partnership with federal agency. *Natural Resources Defense Council v EPA* (1992, DC Dist Col) 806 F Supp 275.

### 3. Relationship with Freedom of Information Act

While extent to which exemption 5 of FOIA (5 USCS § 552(b)(5)) must be given effect in context of Federal Advisory Committee meetings is undecided, mere disclosure of intra-agency memorandum to advisory committee did not have effect of making such memorandum public information to which exemption 5 was inapplicable. *Aviation Consumer Action Project v Washburn* (1976, App DC) 175 US App DC 273, 535 F2d 101.

Section renders disclosure provisions of FOIA applicable to advisory committees and designates each committee as appropriate repository for its own record; it does not impose upon President or office of administration special responsibility to guide document requests. *National Sec. Archive v Archivist of United States* (1990, App DC) 285 US App DC 302, 909 F2d 541; 17 Media L R 2265.

Agency is generally obligated under § 10(b) of Federal Advisory Committee Act (FACA) to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee, and, except for materials agency reasonably believes to be exempt from disclosure pursuant to FOIA, member of public need not request disclosure in order for FACA materials to be made available. *Food Chem. News v Department of Health & Human Servs.* (1992, App DC) 299 US App DC 25, 980 F2d 1468, 21 Media L R 1057.

Member of advisory committee who had all necessary security clearances was entitled to information under FACA that was reviewed and relied upon by committee during its deliberations, even if that information might have been withheld from public pursuant to FOIA exemption. *Cummock v Gore* (1999, App DC) 336 US App DC 347, 180 F3d 282.

While Federal Advisory Committee Act does not contain same express provision of Freedom of Information Act placing burden of proof on agency to sustain action under 5 USCS § 552(b), underlying policy considerations are identical and burden of proof is on advisory committee to support claimed exemption by substantial justification and explanation of basis of claim, not merely by conclusory assertions; Defense Advisory Committee on Women in the Services is not "agency" and matters before it are, therefore, not "inter-agency" within meaning of 5 USCS § 552(b) exception to openness of advisory committee meetings under FACA § 10(d). *Gates v Schlesinger* (1973, DC Dist Col) 366 F Supp 797.

Newsletter reporter is not entitled to preliminary injunction preventing meetings of Advisory Committee on Food and Drug Administration until drafts, working papers, and other documents are publicly released under Federal Advisory Committee Act (5 USCS Appx §§ 1 et seq.), where Committee notified reporter to refer all document requests to HHS's Freedom of Information Office, because Committee properly interprets 5 USCS Appx § 10(b), which makes advisory committee documents "subject to" 5 USCS § 552 (FOIA), as incorporating FOIA procedures as well as FOIA exemptions. *Food Chemical News v Advisory Committee on Food & Drug Admin.* (1991, DC Dist Col) 760 F Supp 220, affd, clarified (1992, App DC) 299 US App DC 25, 980 F2d 1468, 21 Media L R 1057.



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\*\*\* CURRENT THROUGH P.L. 109-242, APPROVED 7/19/2006 \*\*\*

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

5 USCS Appx § 11

§ 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in *section 551(12) of title 5, United States Code*.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 11, 86 Stat. 775.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"The effective date of this Act", referred to in this section, is 90 days following the enactment of Act Oct. 6, 1972, P.L. 92-463, as provided by § 15 of such Act.

**NOTES:**

Related Statutes & Rules:

This section is referred to in *15 USCS § 4806; 19 USCS §§ 2155, 2605; 20 USCS § 9011; 42 USCS § 6273*.

Research Guide:

Federal Procedure:

*15 Fed Proc L Ed, Freedom of Information §§ 38:19, 20*.

Am Jur:

*37A Am Jur 2d, Freedom of Information Acts § 35*.

Annotations:

Construction and application of Federal Advisory Committee Act (*5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]*).  
*160 ALR Fed 483*.

Law Review Articles:

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev* 345.

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*5 USCS Appx § 12*

§ 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 12, 86 Stat. 775.)

**NOTES:**

Related Statutes & Rules:

This section is referred to in *20 USCS § 9011*.

Research Guide:

Annotations:

Construction and application of Federal Advisory Committee Act (*5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]*).  
*160 ALR Fed 483*.

Law Review Articles:

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev 345*.

Interpretive Notes and Decisions:

Plaintiff whose request for transcript of advisory committee meetings was denied, has standing to sue for their production. *Center for Auto Safety v Tiemann (1976, DC Dist Col) 414 F Supp 215*, remanded (1978, App DC) *188 US App DC 426, 580 F2d 689*.

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*5 USCS Appx § 13*

§ 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to *section 552 of title 5, United States Code*, the Director [Administrator] shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 13, 86 Stat. 775.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

Explanatory notes:

The bracketed word "Administrator", referring to the Administrator of General Services, is inserted in this section on the authority of Reorg. Plan No. 1 of 1977, § 5F, *42 Fed. Reg. 56101*, 91 Stat. 1634, which appears as *5 USCS § 903* note, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Or. No. 12024 of Dec. 1, 1977, *42 Fed. Reg. 61445*, which appears as a note to § 2 of this act.

**NOTES:**

Research Guide:

Am Jur:

*54 Am Jur 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices § 224.*

Annotations:

Construction and application of Federal Advisory Committee Act (*5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]*).  
*160 ALR Fed 483.*

Law Review Articles:

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. *69 Brook L Rev 345.*

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*5 USCS Appx § 14*

§ 14. Termination of advisory committees; renewal; continuation

(a) (1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b) (1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 14, 86 Stat. 776.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"The effective date of this Act", referred to in this section, is 90 days following the enactment of Act Oct. 6, 1972, P.L. 92-463, as provided by § 15 of such Act.

## Other provisions:

**Ex. Or. No. 11827 (superseded).** Ex. Or. No. 11827 of Jan. 4, 1975, *40 Fed. Reg. 1217*, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 11948 of Dec. 20, 1976, *41 Fed. Reg. 55705*. The superseded note provided for the continuance of certain Federal advisory committees.

**Ex. Or. No. 11948 (superseded).** Ex. Or. No. 11948 of Dec. 20, 1976, *41 Fed. Reg. 55705*, as amended by Ex. Or. No. 12007 of Aug. 22, 1977, *42 Fed. Reg. 42839*; Ex. Or. No. 12029 of Dec. 14, 1977, *42 Fed. Reg. 63631*, formerly set out as a note under this section, was superseded by Ex. Or. No. 12110 of Dec. 28, 1978, *44 Fed. Reg. 1069*. The superseded note provided for the continuance of certain Federal advisory committees.

**Termination of certain Presidential advisory committees.** Ex. Or. No. 12007 of Aug. 22, 1977, *42 Fed. Reg. 42839* provided:

"By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

"Section 1. (a) The Citizens' Advisory Council on the Status of Women is terminated.

"(b) Executive Order No. 11126 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 [*42 USCS § 2000e* note], is further amended as follows:

"(1) Subsection (5) of Section 102 is revoked.

"(2) Section 103, in order to delete a reference to the Council, is amended to read as follows:

'Annually the Committee shall transmit a report to the President concerning the status of women.'

"(3) Part II is revoked.

"(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows:

'To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee.'

"Sec. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

"(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of Section 4 of Executive Order No. 11514 of March 5, 1970 [*42 USCS § 4321* note], is revoked.

"Sec. 3. (a) The Advisory Council for Minority Enterprise is terminated.

"(b) Section 2 of Executive Order No. 11625 of October 13, 1971 [*15 USCS § 631* note], is revoked.

"Sec. 4. (a) The Consumer Advisory Council is terminated.

"(b) Executive Order No. 11583 of February 24, 1971 [*20 USCS § 887d* note] is amended as follows:

"(1) The second sentence of subsection (b)(1) of Section 2 is amended by deleting '(including the Consumer Advisory Council established in section 5 of this order)'

"(2) Section 5 is revoked.

"Sec. 5. (a) The President's Advisory Board on International Investment is terminated.

"(b) Executive Order No. 11962 of January 19, 1977 [*22 USCS § 3107* note] is revoked.

"Sec. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11948 of December 20, 1976 [formerly set out as a note to this section], which extended the above advisory committees until December 31, 1978, is superseded."

**Quetico-Superior Committee terminated.** Ex. Or. No. 12029 of Dec. 14, 1977, *42 Fed. Reg. 63631* provided:

"By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

"Section 1. (a) The Quetico-Superior Committee is terminated.

"(b) Executive Order No. 11342, as amended, is revoked.

"Sec. 2. Subsection (e) of Section 1 of Executive Order No. 11948 of December 20, 1976 [formerly set out as a note under this section], which extended the above advisory committee until December 31, 1978, is superseded."

**Ex. Or. No. 12110 (superseded).** Ex. Or. No. 12110 of Dec. 28, 1978, § 1-104, *44 Fed. Reg. 1069*, formerly set out as a note to this section, was superseded by Ex. Or. No. 12258 of Dec. 31, 1980, *45 Fed. Reg. 1251*. It provided for continuance of certain Federal advisory committees.

**Advisory Committee on Small and Minority Business Ownership.** Ex. Or. No. 12190 of Feb. 1, 1980, *45 Fed. Reg. 7773* (*15 USCS § 636* note), provided that the Advisory Committee on Small and Minority Business Ownership shall terminate on December 31, 1980.

**State Planning Council on Radioactive Waste Management.** Ex. Or. No. 12192 of Feb. 12, 1980, *45 Fed. Reg. 9729*,

set out as an Other provisions note to 42 USCS § 2021, provided that the State Planning Council on Radioactive Waste Management "shall terminate thirty days after it transmits its final report to the President, but in no event shall it terminate later than eighteen months after the effective date of this Order."

**Section 1-101(h) of Ex. Or. No. 12258 (revoked).** Ex. Or. No. 12258 of Dec. 31, 1980, § 1-101(h), 46 Fed. Reg. 1251; as amended by Ex. Or. No. 12271 of Jan. 15, 1981, 46 Fed. Reg. 4677; Ex. Or. No. 12299 of March 17, 1981, 46 Fed. Reg. 17751, formerly classified as a note to this section, was revoked by Ex. Or. No. 12336 of Dec. 21, 1981, § 4(a), 46 Fed. Reg. 62239, which appears as 42-USCS-§ 2000e note. It provided for further continuance of President's Advisory Committee for Women.

**Termination of certain Federal advisory committees.** Ex. Or. No. 12305 of May 5, 1981, 46 Fed. Reg. 25421, provided:

"By the authority vested in me as President by the Constitution of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended [5 U.S.C. App.], the following Executive Orders, establishing advisory committees, are hereby revoked and the committees terminated:

"(a) Executive Order No. 12059 of May 11, 1978, as amended, establishing the United States Circuit Judge Nominating Commission [former 28 USCS § 44 note];

"(b) Executive Order No. 11992 of May 24, 1977, establishing the Committee on Selection of Federal Judicial Officers [former 28 USCS prec. § 1 note];

"(c) Executive Order No. 12084 of September 27, 1978, as amended by Executive Order 12097 of November 8, 1978, establishing the Judicial Nominating Commission for the District of Puerto Rico [former 28 USCS § 133 note]; and

"(d) Executive Order No. 12064 of June 5, 1978, establishing the United States Tax Court Nominating Commission [former 26 USCS § 7443 note].

"Subsections (g), (i), (j) and (k) of Section 1-101 of Executive Order No. 12258 [former note to this section], extending these committees, are also revoked."

**Termination of boards, committees, and commissions.** Ex. Or. No. 12379 of Aug. 17, 1982, 47 Fed. Reg. 36099, provides:

"By the authority vested in me as President by the Constitution and statutes of the United States of America, and to terminate the establishing authorities for committees that are inactive or no longer necessary, it is hereby ordered as follows:

"Section 1. Executive Order No. 12071, as amended [29 USCS § 1001 note], establishing the President's Commission on Pension Policy, is revoked.

"Sec. 2. Executive Order No. 12042 [unclassified], creating a Board of Inquiry to Report on Labor Disputes Affecting the Bituminous Coal Industry in the United States, is revoked.

"Sec. 3. Executive Order No. 12085 [unclassified], creating an Emergency Board to Investigate a Dispute Between the Norfolk and Western Railway Company and Certain of Its Employees, is revoked.

"Sec. 4. Executive Order No. 12132 [unclassified], creating an Emergency Board to Investigate a Dispute Between the National Railway Labor Conference and Certain of Its Employees, is revoked.

"Sec. 5. Executive Order No. 12095 [unclassified], creating an Emergency Board to Investigate a Dispute Between Wien Air Alaska, Inc., and Certain Individuals, is revoked.

"Sec. 6. Executive Order No. 12159 [unclassified], creating an Emergency Board to Investigate Disputes Between the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; and the United Transportation Union, is revoked.

"Sec. 7. Executive Order No. 12182 [unclassified], creating an Emergency Board to Investigate a Dispute Between the Long Island Rail Road and Certain of Its Employees, is revoked.

"Sec. 8. Executive Order No. 12207 [unclassified], creating an Emergency Board to Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees, is revoked.

"Sec. 9. Executive Order No. 12262 [29 USCS § 1001 note], establishing an Interagency Employee Benefit Council, is revoked.

"Sec. 10. Executive Order No. 12275 [20 USCS § 951 note], establishing the Design Liaison Council, is revoked.

"Sec. 11. Executive Order No. 11829, as amended [25 USCS § 640d note], establishing the Hopi-Navajo Land Settlement Interagency Committee, is revoked.

"Sec. 12. Executive Order No. 11022, as amended [42 USCS § 3001 note], establishing the President's Council on Aging, is revoked.

"Sec. 13. Executive Order No. 12192 [42 USCS § 2021 note], establishing the State Planning Council on Radioactive Waste Management, is revoked.

"Sec. 14. Executive Order No. 12075 [42 USCS § 1450 note], as amended, establishing the Interagency Coordinating Council, is revoked.

"Sec. 15. Executive Order No. 11782 [12 USCS § 2281 note], establishing the Federal Financing Bank Advisory Council, is revoked.

"Sec. 16. Executive Order No. 12089, as amended [15 USCS § 2401 note], establishing the National Productivity Council, is revoked.

"Sec. 17. Executive Order No. 11330, as amended [42 USCS prec § 2711 note], establishing the President's Council on Youth Opportunity, is revoked.

"Sec. 18. Executive Order No. 11256 [unclassified], establishing the President's Committee on Food and Fiber and establishing the National Advisory Commission on Food and Fiber, is revoked.

"Sec. 19. Executive Order No. 11654 [15 USCS § 278f note], continuing the Federal Fire Council, is revoked.

"Sec. 20. Executive Order No. 12083, as amended [42 USCS § 7101 note], establishing the Energy Coordinating Committee, is revoked.

"Sec. 21. Executive Order No. 12285, as amended and ratified [50 USCS § 1701 note], establishing the President's Commission on Hostage Compensation, is revoked.

"Sec. 22. Executive Order No. 12202, as amended [42 USCS § 5848 note], establishing the Nuclear Safety Oversight Committee, is revoked.

"Sec. 23. Executive Order No. 12194 [42 USCS § 4321 note], establishing the Radiation Policy Council, is revoked.

"Sec. 24. The Veterans' Federal Coordinating Committee (Weekly Compilation of Presidential Documents, volume 14, number 41, page 1743) [unclassified] is terminated.

"Sec. 25. The President's Council on Energy Efficiency (Weekly Compilation of Presidential Documents, volume 16, numbers 18 and 30, pages 790 and 1404) [unclassified] is terminated."

**Ex. Or. No. 12399 (superseded).** Ex. Or. No. 12399 of Dec. 31, 1982, 48 *Fed. Reg.* 379, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 12435 of Sept. 30, 1985, 50 *Fed. Reg.* 40319. Such note provided for the continuance of certain federal advisory committees.

**Ex. Or. No. 12489 (superseded).** Ex. Or. No. 12489 of Sept. 28, 1984, 49 *Fed. Reg.* 38927, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 12534 of Sept. 30, 1985, 50 *Fed. Reg.* 40319. Such note provided for continuance of certain federal advisory committees.

**Ex. Or. No. 12534 (superseded).** Ex. Or. No. 12534 of Sept. 30, 1985, 50 *Fed. Reg.* 40319, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 12610 of Sept. 30, 1987, 52 *Fed. Reg.* 36901. Such note provided for continuance of certain federal advisory committees.

**Ex. Or. No. 12610 (superseded).** Ex. Or. No. 12610 of Sept. 30, 1987, 52 *Fed. Reg.* 36901, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 12692 of Sept. 29, 1989, 54 *Fed. Reg.* 40627. Such note provided for continuation of certain Federal advisory committees.

**Ex. Or. No. 12692 (superseded).** Ex. Or. No. 12692 of Sept. 29, 1989, 54 *Fed. Reg.* 40627, which formerly appeared as a note to this section, was superseded by § 4 of Ex. Or. No. 12774 of Sept. 27, 1991, 56 *Fed. Reg.* 49836. Such note provided for continuation of certain Federal advisory committees.

**Ex. Or. No. 12774 (superseded).** Ex. Or. No. 12774 of Sept. 27, 1991, 56 *Fed. Reg.* 49835, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 12869 of Sept. 30, 1993, 58 *Fed. Reg.* 51751, effective Sept. 30, 1993. It provided for continuance of certain Federal advisory committees.

**Termination and limitation of Federal advisory committees.** Ex. Or. No. 12838 of Feb. 10, 1993, 58 *Fed. Reg.* 8207, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act ('FACA'), as amended (5 U.S.C. App.), it is hereby ordered as follows:

"Section 1. Each executive department and agency shall terminate not less than one-third of the advisory committees subject to FACA (and not required by statute) that are sponsored by the department or agency by no later than the end of fiscal year 1993.

"Sec. 2. Within 90 days, the head of each executive department and agency shall submit to the Director of the Office of Management and Budget, for each advisory committee subject to FACA sponsored by that department or agency: (a) a detailed justification for the continued existence, or a brief description in support of the termination, of any advisory committee not required by statute; and (b) a detailed recommendation for submission to the Congress to continue or to terminate any advisory committee required by statute. The Administrator of General Services shall prepare such justifications and recommendations for each advisory committee subject to FACA and not sponsored by a department or agency.

"Sec. 3. Effective immediately, executive departments and agencies shall not create or sponsor a new advisory committee subject to FACA unless the committee is required by statute or the agency head (a) finds that compelling considerations necessitate creation of such a committee, and (b) receives the approval of the Director of the Office of Management and Budget. Such approval shall be granted only sparingly and only if compelled by considerations of national security, health or safety, or similar national interests. These requirements shall apply in addition to the notice and other approval requirements of FACA.

~~"Sec. 4. The Director of the Office of Management and Budget shall issue detailed instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.~~

"Sec. 5. All independent regulatory commissions and agencies are requested to comply with the provisions of this order."

**Ex. Or. No. 12869 (superseded).** Ex. Or. No. 12869 of Sept. 30, 1993, *58 Fed. Reg. 51751*; Ex. Or. No. 12882, Nov. 23, 1993, *58 Fed. Reg. 62493*; formerly classified as a note to this section, was superseded by Ex. Or. No. 12974 of Sept. 29, 1995, *60 Fed. Reg. 51875*, effective Sept. 30, 1995. It provided for continuance of certain Federal advisory committees.

**Ex. Or. No. 12974 (revoked).** Ex. Or. No. 12974, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 13062 of Sept. 29, 1997, *62 Fed. Reg. 51755*. It provided for continuance of certain Federal advisory committees.

**Continuance of certain Federal advisory committees and amendments to Executive Orders 13038 and 13054.** Ex. Or. No. 13062 of Sept. 29, 1997, *62 Fed. Reg. 51755*; Ex. Or. No. 13138 of Sept. 30, 1999, *64 Fed. Reg. 53879*, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

"Sections 1-4. [Superseded—These sections provided for continuance of certain advisory committees; performance of functions of the President; revocation of certain Executive Orders which established committees that have terminated and whose work is completed; and supersession of Ex. Or. No. 12974.]

"Sec. 5. In Executive Order 13038 [47 USCS § 336 note], the second sentence of section 1 is amended by deleting '15' and inserting '22' in lieu thereof.

"Sec. 6. Executive Order 13054 [22 USCS § 3310 note] is amended by revising section 1 to read as follows: 'A United States citizen who is a family member of a Federal civilian employee who has separated from Federal service to accept employment with the American Institute in Taiwan pursuant to section 11 of Public Law 96-8 (22 U.S.C. 3310(a)) may be appointed noncompetitively in a manner similar to noncompetitive appointments under Executive Order 12721 [5 USCS § 3301 note] and implementing regulations of the Office of Personnel Management to a competitive service position in the executive branch, provided such family member meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory overseas employment with the American Institute in Taiwan.'

"Sec. 7. This order shall be effective September 30, 1997."

**Continuance of certain Federal advisory committees.** Ex. Or. No. 13138 of Sept. 30, 1999, *64 Fed. Reg. 53879*; Ex. Or. No. 13225 of Sept. 28, 2001, *66 Fed. Reg. 50291*; Ex. Or. No. 13226 of Sept. 30, 2001, *66 Fed. Reg. 50524*, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

"Sections 1-4. [Superseded—These sections provided for continuance of certain advisory committees; performance of functions of the President; revocation of certain Executive Orders which established committees that have terminated and whose work is completed; and supersession of Ex. Or. No. 13062.]

"Sec. 5. Executive Order 12131 [50 USCS Appx § 2401 note], as amended, is further amended by adding in section 1-102(a) a new paragraph as follows: '(9) Department of Energy.'

"Sec. 6. Executive Order 13115 [unclassified] is amended by adding the Department of the Treasury and the Office of National Drug Control Policy to the Interagency Task Force on the Roles and Mission of the United States Coast Guard, so that the list in section 1(b) of that order shall read as follows:

- (1) Department of State;
- (2) Department of the Treasury;
- (3) Department of Defense;
- (4) Department of Justice;
- (5) Department of Commerce;



- (6) Department of Labor;
- (7) Department of Transportation;
- (8) Environmental Protection Agency;
- (9) Office of Management and Budget;
- (10) National Security Council;
- (11) Office of National Drug Control Policy;
- (12) Council on Environmental Quality;
- (13) Office of Cabinet Affairs;
- (14) National Economic Council;
- (15) Domestic Policy Council; and
- (16) United States Coast Guard.

"Sec. 7. Executive Order 12367 [unclassified], as amended, is further amended as follows:

"(a) in section 1, the text 'the director of the International Communication Agency,' is deleted;

"(b) in section 2, delete the first sentence and insert in lieu thereof 'The Committee shall advise, provide recommendations to, and assist the President, the National Endowment of the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities. The Committee shall initiate and assist in the development of (i) ways to promote public understanding and appreciation of the arts and the humanities; (ii) ways to promote private sector support for the arts and humanities; (iii) ways to evaluate the effectiveness of Federal support for the arts and humanities and their relationship with the private sector; (iv) the planning and coordination of appropriate participation (including productions and projects) in major national cultural events, including the Millennium; (v) activities that incorporate the arts and the humanities in government objectives; and (vi) ways to promote the recognition of excellence in the fields of the arts and the humanities.'; and

"(c) in section 3(b), add the following sentence after the first sentence: 'Private funds accepted under the National Endowment for the Arts' or the National Endowment for the Humanities' gift authority may also be used to pay expenses of the Committee.'

"Sec. 8. Executive Order 12345 [42 USCS § 300u-5 note], as amended, is further amended by deleting the first sentence of section 2(b) and inserting in lieu thereof the following three sentences. 'The council shall be composed of twenty members appointed by the President. Each member shall serve a term of 2 years and may continue to serve after the expiration of their term until a successor is appointed. A member appointed to fill an unexpired term will be appointed for the remainder of such term.'

"Sec. 9. This order shall be effective September 30, 1999."

**Ex. Or. No. 13225 (superseded).** Ex. Or. No. 13225 of Sept. 28, 2001, *66 Fed. Reg. 50291*, which formerly appeared as a note to this section, was superseded by Ex. Or. No. 13316 of September 17, 2003, *68 Fed. Reg. 55255*. It provided for continuation of certain Federal advisory committees.

**Continuance of certain Federal advisory committees.** Ex. Or. No. 13316 of September 17, 2003, *68 Fed. Reg. 55255*; Ex. Or. 13385 of Sept. 29, 2005, *70 Fed. Reg. 57989*, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

"Sections 1, 2. [Superseded—These sections provided for continuance of certain advisory committees and performance of functions of the President.]

"Sec. 3. The following Executive Orders, or sections thereof, which established committees that have terminated or whose work is completed, are revoked:

"(a) Sections 5 through 7 of Executive Order 13111 [5 USCS § 4103], as amended by Executive Order 13188 and Section 3(a) of Executive Order 13218, pertaining to the establishment of the Advisory Committee on Expanding Training Opportunities;

"(b) Executive Order 12975 [42 USCS § 6601 note], as amended by Executive Orders 13018, 13046, and 13137, establishing the National Bioethics Advisory Commission;

"(c) Executive Order 13227 [unclassified], as amended by Executive Order 13255, establishing the President's Commission on Excellence in Special Education;

"(d) Executive Order 13278 [unclassified], establishing the President's Commission on the United States Postal Service;

"(e) Executive Order 13210 [unclassified], establishing the President's Commission to Strengthen Social Security;

"(f) Sections 5 through 8 of Executive Order 13177 [50 USCS Appx § 2099 note], pertaining to the establishment of the President's Council on the Use of Offsets in Commercial Trade;

"(g) Executive Order 13263 [42 USCS § 290bb-3 note], establishing the President's New Freedom Commission on Mental Health;

"(h) Executive Order 13214 [38 USCS § 8111 note], establishing the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans; and

"(i) Executive Order 13147 [42 USCS § 287c-21 note], as amended by Executive Order 13167, establishing the White House Commission on Complementary and Alternative Medicine Policy.

"Sec. 4. Executive Order 13225 is superseded [noted to this section].

"Sec. 5. [Omitted—This section amended Ex. Or. 12131 (50 USCS Appx § 2401 note).]

"Sec. 6. This order shall be effective September 30, 2003."

**Continuance of certain Federal advisory committees and amendments to and revocation of other executive orders.** Ex. Or. No. 13385 of Sept. 29, 2005, 70 Fed. Reg. 57989, provides:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, and consistent with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

"Section 1. Each advisory committee listed below is continued until September 30, 2007.

"(a) Committee for the Preservation of the White House; Executive Order 11145 [3 USCS § 110 note], as amended (Department of the Interior).

"(b) National Infrastructure Advisory Council; section 3 of Executive Order 13231 [6 USCS § 121 note], as amended (Department of Homeland Security).

"(c) Federal Advisory Council on Occupational Safety and Health; Executive Order 12196 [5 USCS § 7902 note], as amended (Department of Labor).

"(d) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 13256 [20 USCS § 1060 note] (Department of Education).

"(e) President's Board of Advisors on Tribal Colleges and Universities; Executive Order 13270 [25 USCS § 1801 note] (Department of Education).

"(f) President's Commission on White House Fellowships; Executive Order 11183 [unclassified], as amended (Office of Personnel Management).

"(g) President's Committee for People with Intellectual Disabilities; Executive Order 12994 [42 USCS § 15001 note], as amended (Department of Health and Human Services).

"(h) President's Committee on the Arts and the Humanities; Executive Order 12367 [unclassified], as amended (National Endowment for the Arts).

"(i) President's Committee on the International Labor Organization; Executive Order 12216 [22 USCS § 271 note], as amended (Department of Labor).

"(j) President's Committee on the National Medal of Science; Executive Order 11287 [42 USCS § 1881 note], as amended (National Science Foundation).

"(k) President's Council of Advisors on Science and Technology; Executive Order 13226 [42 USCS § 6601 note], as amended (Office of Science and Technology Policy).

"(l) President's Council on Bioethics; Executive Order 13237 [42 USCS § 6601 note] (Department of Health and Human Services).

"(m) President's Council on Physical Fitness and Sports; Executive Order 13265 [42 USCS § 300u note] (Department of Health and Human Services).

"(n) President's Export Council; Executive Order 12131 [50 USCS Appx § 2401 note], as amended (Department of Commerce).

"(o) President's National Security Telecommunications Advisory Committee; Executive Order 12382 [unclassified], as amended (Department of Homeland Security).

"(p) Trade and Environment Policy Advisory Committee; Executive Order 12905 [19 USCS § 2155 note] (Office of the United States Trade Representative).

"Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act [5 USCS Appx] that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

"Sec. 3. The following Executive Orders that established committees that have terminated or whose work is completed are revoked:

"(a) Executive Order 13328 [50 USCS § 2301 note], establishing the Commission on the Intelligence Capabilities of the

United States Regarding Weapons of Mass Destruction; and

"(b) Executive Order 13326 [unclassified], establishing the President's Commission on Implementation of United States Space Exploration Policy.

"Sec. 4. Sections 1 and 2 of Executive Order 13316 [note to this section] are superseded by sections 1 and 2 of this order.

"Sec. 5. [Omitted—This section amended Ex. Or. 13231 (6 USCS § 121 note).]

"Sec. 6. [Omitted—This section amended Ex. Or. 12367 (unclassified).]

"Sec. 7. [Omitted—This section amended Ex. Or. 12216 (22 USCS § 271 note).]

"Sec. 8. [Omitted—This section amended Ex. Or. 13226 (42 USCS § 6601 note).]

"Sec. 9. Executive Order 13283 [3 USCS prec § 101 note] is revoked.

"Sec. 10. This order shall be effective September 30, 2005."

#### NOTES:

##### Related Statutes & Rules:

This section is referred to in 5 USCS § 8473; 7 USCS §§ 5843, 5853; 12 USCS § 4703; 15 USCS § 4603; 16 USCS §§ 1a-14, 410nn-3, 410oo-5, 410qq-2, 410ww-21, 430g-8, 460ww-5, 460kkk, 460lll-22, 463, 698u-5, 1274, 5404; 20 USCS § 5508; 21 USCS §§ 360c, 360j; 29 USCS §§ 765, 1142, 2911; 33 USCS § 2251; 38 USCS § 545; 42 USCS §§ 218, 254j, 299c, 299c-1, 300d-1, 300j-5, 300v-3, 2471a, 11221, 12623, 126531, 13458, 14131; 44 USCS § 2701; 49 USCS §§ 30306, 44508.

##### Research Guide:

###### Am Jur:

77 Am Jur 2d, United States § 29.

##### Annotations:

Construction and application of Taylor Grazing Act (43 USCS §§ 315 et seq.). 42 ALR Fed 353.

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS Appx §§ 1-15]). 160 ALR Fed 483.

##### Law Review Articles:

Tuerkheimer. Veto by Neglect: The Federal Advisory Committee Act. 25 Am U L Rev 53, 1975.

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 Brook L Rev 345.

Perritt; Wilkinson. Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years. 63 Geo L J 725, 1975.

The Federal Advisory Committee Act. 10 Harv J Legis 217, 1973.

##### Interpretive Notes and Decisions:

1. Generally. 2. Purpose. 3. Termination of particular committees

#### 1. Generally

Federal Advisory Committee Act was intended to have both immediate effect, through FACA § 14, and prospective effect, through §§ 5, 6 and 7, in providing means by which advisory committees could be reviewed so that those no longer furthering purpose for which they were established could be terminated. *Carpenter v Morton* (1976, DC Nev) 424 F Supp 603.

Decision of whether advisory committee, terminated by FACA § 14, should be re-established is discretionary with particular administrative agency and cannot be reviewed by district court. *Hiatt Grain & Feed, Inc. v Bergland* (1978, DC Kan) 446 F Supp 457, 11 Env't Rep Cas 1961, aff'd (1979, CA10 Kan) 602 F2d 929, cert den (1980) 444 US 1073, 62 L Ed 2d 755, 100 S Ct 1019.

#### 2. Purpose

It is clear that when Congress enacted Federal Advisory Committee Act, it was concerned about proliferation of advisory committees which had outlived their usefulness; to remedy situation, Congress in FACA § 14 chose to terminate

all advisory committees and in doing so contemplated that Act would affect existing substantive law and that if it later decided advisory committees were necessary, Congress would enact legislation to recharter them. *Carpenter v Morton* (1976, DC Nev) 424 F Supp 603.

**3. Termination of particular committees**

FACA § 14 terminated all Boards of Grazing District Advisers which were established under authority of 43 USCS §§ 315 et seq. *Carpenter v Morton* (1976, DC Nev) 424 F Supp 603.

15 of 16 DOCUMENTS

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\*\*\* CURRENT THROUGH P.L. 109-242, APPROVED 7/19/2006 \*\*\*

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

5 USCS Appx § 15

§ 15. Requirements relating to the National Academy of Sciences and the National Academy of Public Administration

(a) In general. An agency may not use any advice or recommendation provided by the National Academy of Sciences or National Academy of Public Administration that was developed by use of a committee created by that academy under an agreement with an agency, unless—

(1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;

(2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997 [enacted Dec. 17, 1997], the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and

(3) in developing the advice or recommendation, the academy complied with—

(A) subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of Sciences; or

(B) subsection (b)(2) and (5), in the case of any advice or recommendation provided by the National Academy of Public Administration.

(b) Requirements. The requirements referred to in subsection (a) are as follows:

(1) The Academy shall determine and provide public notice of the names and brief biographies of individuals that the Academy appoints or intends to appoint to serve on the committee. The Academy shall determine and provide a reasonable opportunity for the public to comment on such appointments before they are made or, if the Academy determines such prior comment is not practicable, in the period immediately following the appointments. The Academy shall make its best efforts to ensure that (A) no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed, unless such conflict is promptly and publicly disclosed and the Academy determines that the conflict is unavoidable, (B) the committee membership is fairly balanced as determined by the Academy to be appropriate

for the functions to be performed, and (C) the final report of the Academy will be the result of the Academy's independent judgment. The Academy shall require that individuals that the Academy appoints or intends to appoint to serve on the committee inform the Academy of the individual's conflicts of interest that are relevant to the functions to be performed.

(2) The Academy shall determine and provide public notice of committee meetings that will be open to the public.

(3) The Academy shall ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public, unless the Academy determines that a meeting would disclose matters described in *section 552(b) of title 5, United States Code*. The Academy shall make available to the public, at reasonable charge if appropriate, written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy, unless the Academy determines that making material available would disclose matters described in that section.

(4) The Academy shall make available to the public as soon as practicable, at reasonable charge if appropriate, a brief summary of any committee meeting that is not a data gathering meeting, unless the Academy determines that the summary would disclose matters described in *section 552(b) of title 5, United States Code*. The summary shall identify the committee members present, the topics discussed, materials made available to the committee, and such other matters that the Academy determines should be included.

(5) The Academy shall make available to the public its final report, at reasonable charge if appropriate, unless the Academy determines that the report would disclose matters described in *section 552(b) of title 5, United States Code*. If the Academy determines that the report would disclose matters described in that section, the Academy shall make public an abbreviated version of the report that does not disclose those matters.

(6) After publication of the final report, the Academy shall make publicly available the names of the principal reviewers who reviewed the report in draft form and who are not officials, agents, or employees of the Academy.

(c) Regulations. The Administrator of General Services may issue regulations implementing this section.

#### **HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 15, as added Dec. 17, 1997, P.L. 105-153, § 2(b), 111 Stat. 2689.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

##### Redesignation:

Another § 15 of Act Oct. 6, 1972, P.L. 92-463, was redesignated § 16 of such Act by Act Dec. 17, 1997, P.L. 105-153, § 2(b), 111 Stat. 2689, and now appears as 5 USCS Appx § 16.

##### Other provisions:

**Report on implementation and compliance.** Act Dec. 17, 1997, P.L. 105-153, § 3, 111 Stat. 2691, provides: "Not later than 1 year after the date of the enactment of this Act, the Administrator of General Services shall submit a report to the Congress on the implementation of and compliance with the amendments made by this Act [amending § 3 of the Federal Advisory Committee Act, redesignating § 15 as § 16, and adding a new § 15]."

#### **NOTES:**

##### Research Guide:

##### Annotations:

Construction and application of Federal Advisory Committee Act (5 U.S.C.A. App. 2 §§ 1-15 [5 USCS App. 2 §§ 1-15]). 160 ALR Fed 483.

##### Law Review Articles:

Kello. Drawing the curtain on open government? In defense of the Federal Advisory Committee Act. 69 *Brook L Rev* 345.

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\*\*\* CURRENT THROUGH P.L. 109-242, APPROVED 7/19/2006 \*\*\*

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES  
TITLE 5—APPENDIX  
FEDERAL ADVISORY COMMITTEE ACT

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

*5 USCS Appx § 16*

**§ 16. Effective date**

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment [enacted Oct. 6, 1972].

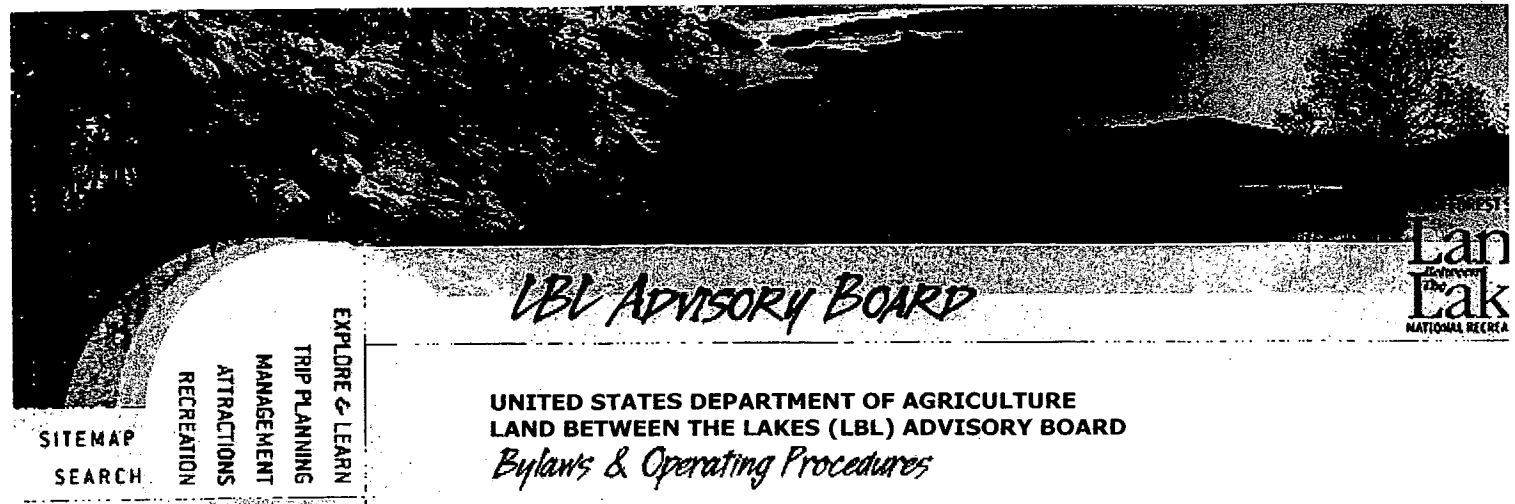
**HISTORY:**

(Oct. 6, 1972, P.L. 92-463, § 16 [15], 86 Stat. 777.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Redesignation:**

This section, enacted as § 15 of Act Oct. 6, 1972, P.L. 92-463, was redesignated § 16 of such Act by Act Dec. 17, 1997, P.L. 105-153, § 2(b), 111 Stat. 2689.



**UNITED STATES DEPARTMENT OF AGRICULTURE  
LAND BETWEEN THE LAKES (LBL) ADVISORY BOARD**

*Bylaws & Operating Procedures*

June 1, 2005

**SECTION I: PURPOSE**

The purpose of the LBL Advisory Board (Board) is to provide advice to the Secretary of Agriculture (Secretary) on the following:

- Means of promoting public participation for the land and resource management plan for LBL
- Environmental education.

**SECTION II: AUTHORITY**

- A. The Secretary, in accordance with Section 522 of the LBL Protection Act, established the LBL Advisory Board. The Board is subject to the Federal Advisory Committee Act (FACA), as outlined in the amended LBL Protection Act and the current Advisory Board Charter, as filed with Congress.
- B. For the purposes of National Forest System Land and Resource Management Planning under the provisions of CFR 219.19(a), November 9, 2000, this Board may be utilized as the committee that the Responsible Official (Regional Forester or Area Supervisor) may use for access to knowledge of local conditions and issues in the Forest Service planning process.

**SECTION III: MEMBERSHIP SELECTION AND APPOINTMENT**

Members of the Board are appointed by the Secretary and seven state and local public officials from Kentucky and Tennessee as described in the Charter. Each member shall serve without compensation and shall not be considered an employee of the United States Department of Agriculture. Appointments will be for five years.

When vacancies occur in a primary membership, the applicable appointing official will be asked to appoint a new primary member to the Board. The designated alternate will fill in as the official representative of their appointing agency until a new primary member is appointed. If an alternate is no longer able to serve, or is appointed to the primary membership, the applicable appointing official will be asked to designate a new alternate.

Appointments are final when notification of the appointment is received by the DFO from the appointing agency. Primary members will officially begin their five-year term at the fall meeting in the year of their appointment. Alternates who move up to a primary membership will officially begin their five-year term as a primary member at

the fall meeting in the year of their appointment.

Members may not succeed themselves as primary members on the Board; however, they may be appointed to additional terms so long as no individual serves more than five consecutive years as a member of the Board. Alternates do not have a term, so there is no limit to the amount of time they may serve in that capacity. They do, however, serve at the pleasure of their appointing agency.

Membership includes the responsibility to personally attend Board meetings, and members will be expected to show commitment to the board by their attendance. If a Board member misses three consecutive meetings, the Chair may recommend their termination as a Board member to the appointing official.

Members will notify the DFO at least 2 weeks in advance if they are unable to attend a meeting so that the alternate member may be contacted. Approved alternates will have full voting rights in the absence of primary members.

#### **SECTION IV: MEETING PROCEDURES**

The Board will meet at least twice each year; however, additional meetings may be held as needed. Meetings will be called by the Board Chairperson (Chairperson) with the concurrence of the Designated Federal Official (DFO), in accordance with the following considerations:

##### **A. Quorum and Voting**

The Charter requires that nine voting members constitute a quorum for the conduct of business. Any Board recommendation to the Secretary requires an affirmative vote of at least a majority of the total Board membership on that date. Consensus on decisions and recommendations is desirable.

##### **B. Agenda**

The DFO will initiate and approve the agenda for all meetings in consultation with the Chairperson. Any member of the Board may submit items for the agenda to the DFO and/or Chairperson. Also, items may be suggested by members of the public to the Board for consideration as agenda items at future meetings. All proposed agenda items must directly relate to the purpose of the Board as described in Section I. Copies of the agenda will be distributed to the members prior to each meeting, and an outline of the agenda will be published with the notice of the meeting in the Federal Register. Meeting agendas will also be available at the LBL Administrative Office and on the LBL web page.

##### **C. Minutes and Records**

The DFO will prepare minutes of each meeting, submit them to the Chairperson for certification, and distribute copies to each Board member within 30 working days of the meeting date. Minutes will also be available for review at the LBL Administrative Office and will be accessible on the LBL web page. The minutes will include a record of the members and Forest Service staff present and the names of members of the public requested to make an oral presentation, if applicable; a complete and accurate description of the matters discussed and conclusions reached; and copies of all reports received, issued, or approved by the Board. Additionally, a cumulative listing of Board recommendations will be maintained by the DFO. The listing of Board recommendations and the meeting minutes will be available to the public upon request.

All documents, reports, or other materials prepared by, or for, the Board constitute official government records and will be maintained according to USDA and FACA policies and procedures.



**D. Meeting Access**

Meeting Access All meetings of the Board will be open to the public for the duration of the meeting. All materials brought before or presented to the Board during the conduct of an open meeting, including minutes of the proceedings, will be available to the public for review, subsequent to the meeting, at the LBL Administrative Office.

Written statements from the public may be submitted to the Board at any time through the DFO; however, written statements received less than 1 week prior to the meeting will not be available to the members until after the meeting.

Time will be reserved on the agenda at each meeting for Board members to discuss comments received prior to that meeting from members of the public. If the individual submitting the comment is present at the meeting, the Board may ask questions for clarification while the comment is being reviewed. This will be an informal question/answer session and time allotted will be limited. Responses will be included in the meeting notes. If a comment received falls within the two purposes of the Board, and if the Board determines that more detailed clarification is required, a time will be scheduled on the agenda at an upcoming Advisory Board meeting for the individual to provide more detailed oral clarification, pertaining to the original comment received by the Board. The individual will be required to provide a written copy of the presentation, and any handouts they will use, to the DFO two (2) weeks prior to the meeting date so copies can be sent to Board Members for their review before the meeting. Time allotted for the detailed oral clarification will be limited. All oral comments from the public, during initial clarification or further detailed clarification if requested by the Board, will be considered as information for the Board. The Chairperson will determine the extent to which the Board will respond to the statements during the meeting, and also the time allotted for clarification.

The meeting announcement published in the Federal Register and made available to public media will note if an oral clarification from a member of the public is scheduled during the meeting.

**SECTION V: ROLE OF BOARD OFFICIALS** — Executive Board

**Chairperson:**

The Regional Forester of the Southern Region, USDA Forest Service, serves as the Chairperson. The Deputy Regional Forester serves as the alternate Chairperson. The Chairperson is a non-voting member who works with the DFO to establish priorities, identify issues that must be addressed, and determine the level and types of staff and financial support required. The Chairperson calls meetings with the concurrence of the DFO, conducts meetings, certifies the accuracy of meeting minutes, and is responsible for notifying the public before a meeting occurs. A notice of the upcoming meeting will be placed in the Federal Register 15 calendar days prior to the meeting date and notices will also be distributed through local media 2 weeks prior to the meeting. A meeting facilitator may be employed to assist the Chairperson in conducting meetings. The Chairperson may adjourn meetings with approval of the majority of members present. The alternate Chairperson will accomplish all duties of the Chairperson in his/her absence.

**Designated Federal Officer:**

The LBL Area Supervisor serves as the Designated Federal Officer (DFO). The Acting Area Supervisor serves as the alternate DFO. The DFO, or the alternate DFO, serves as the government's agent for all matters related to the Board's activities. By law, the DFO must: (1) approve or call meetings of the Board; (2) approve agendas; and (3) attend all meetings. The DFO shall adjourn meetings when such adjournment is in the public interest. The alternate DFO will accomplish all duties of the Designated Federal Officer in his/her absence.

The DFO is responsible for providing adequate staff support to the Board, including: (1) notifying members of the time and place of each meeting; (2) maintaining records of all meetings, including subgroup or working group activities, as required by law; (3) maintaining the roll; (4) preparing the minutes of all meetings of the Board's

deliberations, including subgroup and working group activities; (5) attending to official correspondence; (6) maintaining official Board records and filing all papers and submissions prepared for or by the Board, including items generated by subgroups and working groups; (7) acting as the Board's agent to collect, validate, and pay all vouchers for pre-approved expenditures; and (8) preparing and handling all reports, including the annual report as required by FACA.

#### **~~SECTION VI: EXPENSES AND REIMBURSEMENT~~**

Expenses related to the operation of the Board will be borne by USDA. Expenditures of any kind must be approved in advance by the DFO.

USDA will pay travel and per diem for Board members at a rate equivalent to that allowable for USDA employees. Members will be required to submit a travel voucher to the DFO with required receipts for out-of-pocket travel and per diem expenses attached. Alternate members will be reimbursed for travel expenses only when they attend an Advisory Board meeting as the official representative of their appointing agency in the absence of the primary member. Completed and signed travel vouchers for expenses should be submitted to the DFO within 30 days after each meeting.

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

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Pennsylvania Dept. of Public Welfare v. U.S.  
W.D.Pa., 2006.

Only the Westlaw citation is currently available.

United States District Court, W.D. Pennsylvania.  
COMMONWEALTH OF PA DEPT OF PUBLIC  
WELFARE, Plaintiff,

v.

UNITED STATES, U.S. Dept of Health & Human  
Services, Defendants.

No. CIVA 05-1285.

Dec. 21, 2006.

Jason W. Manne, Department of Public Welfare Office of General Counsel, Pittsburgh, PA, for Plaintiff.  
Lee J. Karl, United States Attorney's Office, Pittsburgh, PA, for Defendants.

MEMORANDUM ORDER

AMBROSE, Chief District J.

\*1 The above captioned complaint was received by the Clerk of Court on September 16, 2005, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Doc. No. 22), filed on November 22, 2006, recommended that Defendants' Motion for Summary Judgment (Doc. No. 8) be granted with regard to the issue of the adequacy of the FOIA search, but denied without prejudice in all other respects. The Report and Recommendation further recommended that Plaintiff's Rule 56(f) Motion (Doc. No. 13) be denied without prejudice on the issue of the adequacy of the FOIA search, but granted on the remaining issues. Service was made on all counsel of record. Plaintiff filed timely Objections to the Report and Recommendation (Doc. No. 23) on December 1, 2006, to which Defendants filed a timely response on December 12, 2006 (Doc. No. 26). Defendants filed timely Objections to the Report and Recommendation on December 6, 2006 (Doc. No. 24), to which Plaintiff filed a timely response on December 18, 2006 (Doc.

No. 28). After review of the pleadings and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 21st day of December, 2006,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (Doc. No. 8) is GRANTED IN PART AND DENIED IN PART. Defendants' Motion for Summary Judgment is GRANTED WITH PREJUDICE as to the adequacy of the FOIA search, and DENIED WITHOUT PREJUDICE in all other respects.

IT IS FURTHER ORDERED that Plaintiff's Rule 56(f) Motion (Doc. No. 13) is GRANTED IN PART AND DENIED IN PART. Plaintiff's Rule 56(f) Motion is DENIED WITH PREJUDICE on the issue of the adequacy of the FOIA search, and GRANTED on the remaining issues. Plaintiff is entitled to limited discovery on the remaining issues, the parameters of which shall be set by the Magistrate Judge.

IT IS FURTHER ORDERED that the Report and Recommendation (Doc. No. 22) of Magistrate Judge Lenihan, dated November 22, 2006, is adopted as the opinion of the Court.

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that Defendants' Motion for Summary Judgment (Doc. No. 8) be granted with regard to the issue of the adequacy of the search, and denied without prejudice in all other respects. It is further recommended that Plaintiff's Rule 56(f) Motion (Doc. No. 13) be denied with prejudice on the issue of the adequacy of the search, and granted on the remaining issues.

II. REPORT

Plaintiff, the Commonwealth of Pennsylvania Department of Public Welfare ("Commonwealth"), instituted this action pursuant to the Freedom of In-

formation Act ("FOIA"), 5 U.S.C. § 552, to compel the United States and its Department of Health and Human Services ("HHS") to disclose certain documents relating generally to audits conducted by HHS's Office of Inspector General ("OIG") and, specifically, to the review of Title IV-E foster care programs. The Commonwealth made five separate requests pursuant to FOIA between June 29, 2005 and July 19, 2005 for specific materials in these categories. All told, HHS has released approximately 925 pages of responsive materials to the Commonwealth, including pages with redactions, and has withheld in their entirety approximately 202 pages of responsive materials, claiming the withheld materials are exempt from disclosure under 5 U.S.C. § 552(b)(5) ("Exemption (b)(5)"). The Commonwealth disputes the applicability of Exemption (b)(5) to approximately 196 pages of responsive materials withheld by HHS, and also challenges the adequacy of the search conducted by HHS, as well as HHS's representation that it has released all responsive and reasonably segregable factual information. This Court has original subject matter jurisdiction over the action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

\*2 HHS has filed a Motion for Summary Judgment (Doc. No. 8); based on its *Vaughn* indices and supporting declarations. In response, the Commonwealth has filed a brief and supplemental brief in opposition, supporting affidavit, and a Rule 56(f) Motion for Discovery (Doc. No. 13). For the reasons set forth below, the Court recommends that Defendants' motion for summary judgment be granted in part and denied in part, and that Plaintiff's Rule 56(f) Motion for Discovery be granted with limitations.

#### A. Standard of Review-Motion for Summary Judgment

The summary judgment standard of Fed.R.Civ.P. 56(c) applies to FOIA cases as it would to any other civil action. Commw. of Pa., Dep't of Public Welfare v. United States Dep't of Health & Human Serv., 623 F.Supp. 301, 303 (M.D.Pa.1985). Summary judgment is appropriate if, drawing all inferences in favor of the nonmoving party, "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is

no genuine issue of material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Summary judgment may be granted against a party who fails to adduce facts sufficient to establish the existence of any element essential to that party's case, and for which that party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

More specifically, the moving party bears the initial burden of identifying evidence which demonstrates the absence of a genuine issue of material fact. Once that burden has been met, the nonmoving party must set forth "specific facts showing that there is a *genuine issue for trial*" or the factual record will be taken as presented by the moving party and judgment will be entered as a matter of law. Matsushita Elec. Indus. Corp. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting Fed.R.Civ.P. 56(e)) (emphasis added by *Matsushita* Court). An issue is genuine only "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

In order to prevail on a motion for summary judgment in a FOIA action, the government agency must show that there are no disputed material facts and that each page of material that falls within the requested category either has been produced, is unidentifiable, or is exempt from disclosure. Students Against Genocide v. Dep't of State, 257 F.3d 828, 833 (D.C.Cir.2001) (citations omitted); Weisberg v. U.S. Dep't of Justice, 627 F.2d 365, 368 (D.C.Cir.1980) (citation omitted). As to the second part of its burden, the agency must demonstrate that its search was adequate and that any withheld documents fall within one of the FOIA exemptions. Lee v. U.S. Dep't of Justice, 235 F.R.D. 274, 287 (W.D.Pa.2006) (citing 5 U.S.C. § 552(a)(4)(B)); Carney v. U.S. Dep't of Justice, 19 F.3d 807, 812 (2d Cir.1994)). As the possessor of the records and the party responsible for conducting the search, the agency may satisfy this burden by filing a "reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were

searched.” *Id.* (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C.Cir.1999); citing *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 552 (D.C.Cir.1994)). In addition, the affidavits or declarations must aver facts showing that the agency has conducted a thorough search and provide reasonably detailed explanations as to why any withheld documents fall within the claimed exemption. *Id.* (citing *Carney*, 19 F.3d at 812; *Maynard v. Cent. Intelligence Agency*, 986 F.2d 547, 559-60 (1st Cir.1993); *Perry v. Block*, 684 F.2d 121, 126-27 (D.C.Cir.1982)). Affidavits or declarations which satisfy this burden are to be given a presumption of good faith by the district court. *Id.* (citing *SafeCard Servs., Inc. v. Sec. & Exch. Comm'n.*, 926 F.2d 1197, 1200 (D.C.Cir.1991)). Thus, courts have granted summary judgment in favor of the agency when the agency's affidavits “describe the withheld information and the justification for withholding with reasonable specificity, demonstrating a logical connection between the information and the claimed exemption ..., and are not controverted by either contrary evidence in the record nor [sic] by evidence of agency bad faith.” *Davin v. U.S. Dep't of Justice*, 60 F.3d 1043, 1050 (3d Cir.1995) (quoting *Am. Friends Serv. Comm'n v. Dep't of Defense*, 831 F.2d 441, 444 (3d Cir.1987)) (other citation omitted).

\*3 “[D]iscovery relating to the agency's search and the exemptions it claims for withholding records generally is unnecessary so long as the agency's submissions are facially adequate.” *Id.* (citing *Goland v. Cent. Intelligence Agency*, 607 F.2d 339, 352 (D.C.Cir.1978)). If the agency's submissions are determined to be facially adequate, the district court may refuse discovery and award summary judgment based on the affidavits. *Id.* (citing *Goland, supra*). If, however, a review of the record raises substantial doubt, especially where the requests are “well-defined” and the complainant submits positive indications of overlooked materials, summary judgment is inappropriate. *Id.* (citing *Valencia-Lucena*, 180 F.3d at 326; *Founding Church of Scientology of Washington, D.C., Inc. v. Nat'l Sec. Agency*, 610 F.2d 824, 830 (D.C.Cir.1979)).

B. Statement of Relevant Facts and Procedural History

On June 29, 2005, the Commonwealth sent the first of five FOIA requests to HHS requesting inter-agency agreements between OIG and Administration for Children and Families (“ACF”), and between OIG and the Centers for Medicare and Medicaid Programs (“CMS”) regarding the performance of audits for these programs; all OIG statistical sampling policies; and contract documents relating to OIG's use of the Teammate working paper software.<sup>FN1</sup> (Ex. A to Pl.'s Compl.) On that same date, the Commonwealth sent a second FOIA request to HHS requesting all documents evidencing or discussing any agreement between ACF or its Regional Administrator, David Lett, and OIG relating to review of Pennsylvania's Title IV-E claims for any periods of time between 1997 and 2002.<sup>FN2</sup> (Ex. B to Pl.'s Compl.)

<sup>FN1.</sup> HHS assigned Case No.2005-0952-FW to the Commonwealth's first FOIA request. See *Declaration of Katherine Hooten* dated 1/13/06 (attached as Ex. D to Mem. of Law in Supp. of Defs.' Motion for Summ. J.) (“Hooten Decl. F”) at ¶ 5.

<sup>FN2.</sup> HHS assigned Case No.2005-0951 - MB to the Commonwealth's second FOIA request. See *Hooten Decl. I* at ¶ 7.

On June 30, 2005, the Commonwealth submitted its third FOIA request to HHS requesting documents relating to all child eligibility review instruments used by OIG auditors in ongoing or completed audits of Title IV-E maintenance payments made by states and local governments.<sup>FN3</sup> (Ex. C to Pl.'s Compl.) Also on June 30, 2005, the Commonwealth sent a fourth FOIA request to HHS requesting any letters to state officials after January 1, 2000 announcing the initiation of an audit by OIG relative to a state Title IV-E program except for completed audits whose reports were posted on the HHS web-site or, alternatively, a letter listing the ongoing Title IV-E audits.<sup>FN4</sup> (Ex. D to Pl.'s Compl.)

<sup>FN3.</sup> HHS assigned Case No.2005-0953-RE to the Commonwealth's third FOIA request. See *Declaration of Diane J. Diggs* dated 12/7/05 (attached as Ex. E to Mem. of Law

in Supp. of Defs.' Motion for Summ. J.) ("Diggs Decl.") at ¶ 9.

FN4. HHS assigned Case No.2005-0954-mb to the Commonwealth's fourth FOIA request. See *Diggs Decl.* at ¶ 11.

Finally, on July 19, 2005, the Commonwealth sent its fifth FOIA request to HHS requesting all documents post 1997 relating to decisions by ACF and OIG to subject Pennsylvania's Title IV-E program to audit by OIG, discussions held by the staff of ACF, including ACF Regional Administrator David Lett, or OIG staff relative to whether Pennsylvania's Title IV-E program should be audited by OIG, and the decision by OIG to include a cost analysis of Title IV-E provider rates in its audit of Pennsylvania's Title IV-E program.<sup>FN5</sup> (Ex. E to Pl.'s Compl.) In this request, the Commonwealth specifically sought the release of segregable factual material contained in privileged documents.<sup>FN6</sup> (*Id.*)

FN5. HHS assigned Case No.2005-1000-RE to the Commonwealth's fifth FOIA request. See *Diggs Decl.* at ¶ 12.

FN6. Although the FOIA requestor's purpose for requesting the information is irrelevant, the Court notes that the majority of the information sought in the five FOIA requests here appears to be related to claims asserted by the Commonwealth in a separate lawsuit filed in this judicial district at Civil Action No. 05-1345, under the caption, "*Commonwealth of Pennsylvania Department of Public Welfare v. United States, United States Department of Health and Human Services.*" On September 19, 2006, judgment was entered in favor of defendants in the case filed at 05-1345. The Commonwealth has appealed the judgment in Civil Action No. 05-1345 to the U.S. Court of Appeals for the Third Circuit by filing a notice of appeal on September 22, 2006.

\*4 Other than acknowledging receipt of the FOIA requests and denying the Commonwealth's requests for a fee waiver, HHS did not respond to the document

requests within the time required by law. (Compl. ¶ 6.) Therefore, while HHS was processing the five FOIA requests, the Commonwealth instituted the present FOIA action on September 16, 2005.

Subsequently, on October 19, 2005, HHS responded to the Commonwealth's fourth FOIA request (Case No.2005-0954-mb) by producing in its entirety a list of letters announcing the initiation of audits by OIG relating to state Title IV-E programs. (Ex. 6 to *Declaration of Robert Eckert* dated 4/12/06 ("*Eckert Decl. I*").<sup>FN7</sup>) Thereafter, the parties proposed and the Court approved a case management plan, pursuant to which HHS conducted its search for documents corresponding to the first, second, third, and fifth FOIA requests made respectively in Case Nos.2005-0952-FW, 2005-0951-MB, 2005-0953-RE, and 2005-1000-RE.

FN7. The Declaration of Robert Eckert dated 4/12/06 is attached as Exhibit A to the Memorandum of Law in Support of Defendants' Motion for Summary Judgment (Doc. No. 9).

On January 5, 2006, HHS informed the Commonwealth that after searching its records, it was able to locate approximately 1,128 pages responsive to the Commonwealth's requests and released approximately 830 pages, some of which contained redactions. (Ex. 8 to *Eckert Decl. I*.) In this regard, HHS informed the Commonwealth that employer identification numbers under Exemption (b)(4)<sup>FN8</sup>, information documenting the deliberative process under Exemption (b)(5)<sup>FN9</sup>, and names and other identifiers of minor children under Exemption (b)(6)<sup>FN10</sup> were redacted from the released documents. (*Id.*) HHS withheld the remaining 298 pages in their entirety based on Exemption (b)(5).<sup>FN11</sup> (*Id.*)

FN8. Exemption (b)(4) allows the agency to withhold "commercial or financial information obtained from a person and privileged or confidential". 5 U.S.C. § 552(b)(4).

FN9. Exemption (b)(5) allows the agency to withhold "inter-agency or intra-agency memorandums or letters which would not be



available by law to a party other than an agency in litigation with the agency". 5 U.S.C. § 552(b)(5). The courts have recognized that Exemption (b)(5) generally protects from disclosure materials that would be protected under the executive or "deliberative process" privilege, attorney-client privilege, and/or the attorney work product privilege. Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 862 (D.C.Cir.1980) (citations omitted).

**FN10.** Exemption (b)(6) allows the agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy". 5 U.S.C. § 552(b)(6).

**FN11.** HHS informed the Commonwealth that it withheld materials under Exemption (b)(5) based on either the deliberative process, the attorney work-product, and/or the attorney-client privileges. (Ex. 8 to *Eckert Decl. I*.)

HHS produced its *Vaughn* indices **FN12** on February 28, 2006 for materials withheld in their entirety and released with redactions in Case Nos.2005-951-MB and 2005-1000-RE (Ex. 9), Case No.2005-0952-FW (Ex. 10), and Case No.2005-953-RE (Ex. 11). (Ex. 9-11 to *Eckert Decl. I*; Ex. C to Mem. of Law in Supp. of Defs.' Mot. for Summ. J.) The *Vaughn* indices provided by HHS identify each material withheld or containing withheld information by providing: (1) the Bate-stamp page number and number of pages, (2) a description of the material, (3) an indication of the amount of information withheld and the length of the document, and (4) the basis for the exemption claimed. According to the *Vaughn* indices submitted by HHS for Case Nos.2005-1000-RE and 2005-951-MB, which are the only *Vaughn* indices at issue here, HHS withheld 202 pages in their entirety, **FN13** released with its *Vaughn* indices two (2) pages which had been redacted, **FN14** released with its *Vaughn* indices 92 pages in their entirety, **FN15** and provided an explanation for 66 pages of previously released materials that had been redacted. **FN16**

**FN12.** In *Vaughn v. Rosenn*, 484 F.2d 820 (D.C.Cir.1974) (*Vaughn I*), the Court of Appeals for the District of Columbia Circuit delineated certain information that must be provided by the agency for any documents being withheld under one of the enumerated exemptions under FOIA to satisfy its burden of proof, which has become known as the "*Vaughn* Index".

**FN13.** HHS alleges that 204 pages of responsive materials were withheld in their entirety; however, the Court, in its review of the *Vaughn* indices, calculated only 202 pages withheld in their entirety. HHS assigned the following Bate-stamp page numbers to these 202 unreleased pages: 490-91, 492-93, 494-95, 497-98, 499, 500-06, 512, 513-16, 517, 518-19, 520, 521-24, 525, 526-28, 529, 530, 531, 532, 533, 537, 538, 539, 542, 545, 546, 556, 584-86, 690-93, 831, 832, 833, 834-35, 836, 837, 838, 839, 84-85, 86, 87-88, 89-90, 91, 92-93, 94-95, 96, 97, 98, 99-100, 101-02, 103, 104-05, 112, 113-14, 115-17, 118, 194-95, 196-97, 198-200, 201-02, 203-04, 205-08, 209-11, 212-15, 217-18, 221-22, 223-24, 227-30, 233-35, 236-37, 238-39, 241, 242, 243, 245, 246-47, 248, 249-50, 251, 252-53, 254-55, 256-57, 258-59, 260-61, 262-64, 265, 266-67, 268, 269, 270-71, 272-73, 274-76, 277-79, 280-84, 285-86, 287-88, 289-91, 292, 343, 344, 345, 346, 465, 466-68, 469, and 470-482.

**FN14.** These two pages are found at Bate-stamp page nos. 496 and 557.

**FN15.** The following Bate-stamp page numbers are assigned to these materials: 543-44, 106, 107, 108-09, 110-11, 119-193, 216, 219, 220, 225-26, 231-32, 240, and 244. Although HHS does not indicate in its *Vaughn* indices that page no. 244 was redacted, the Commonwealth contends that page was redacted and it is contesting the withholding of the redacted information.

FN16. The following Bate-stamp page numbers are assigned to these materials: 507-511, 547-55, 699-705, 711-24, 725-43, and 747-58.

In response, on March 28, 2006, the Commonwealth corresponded with HHS and provided a list of withheld documents which correlated to those listed in HHS's *Vaughn* indices for Case Nos. 2005-1000-RE and 2005-951-MB, for which it was challenging the specific claimed exemptions. (Ex. B attached to Mem. of Law in Supp. of Defs.' Mot. for Summ. J.) Initially, in its March 28, 2006 correspondence, the Commonwealth challenged HHS's claimed exemptions for 191 pages of responsive materials FN17 188 of the challenged pages were withheld in their entirety by HHS; FN18 the other three (3) pages were redacted and released with the *Vaughn* indices. FN19 However, a subsequent filing by the Commonwealth on June 2, 2006 (Ex. A to Rule 56(f) Declaration of Jason Manne (Doc. No. 14)) actually places 196 pages in dispute. FN20 Of these 196 pages, 29 appear to be duplicates of the withheld material. FN21 On March 28, 2006, the Commonwealth also informed HHS that it was contesting the adequacy of the search and objected to HHS's failure to disclose segregable factual material in the documents. (*Id.*)

FN17. The Commonwealth's March 28, 2006 challenge to the *Vaughn* indices actually lists 193 pages for which the claimed exemptions are disputed. However, that list includes Bate-stamped page nos. 219 and 220, which were released in their entirety by HHS with its *Vaughn* indices. The Commonwealth has subsequently acknowledged receipt of page nos. 00219 and 00220 and withdrawn its challenge to these pages. (Ex. C attached to Mem. of Law in Supp. of Defs.' Mot. for Summ. J.; Pl.'s Br. in Opp'n to HHS's Mot. for Summ. J. and in Supp. of its Rule 56(f) Mot. at 2 n. 2.)

FN18. The 188 pages withheld in their entirety which the Commonwealth is challenging are assigned the following Bate-stamp page numbers: 490-91, 492-93, 494-95, 497-98, 499, 500-06, 512, 513-16, 517,

518-19, 520, 521-24, 526-28, 529, 530, 531, 532, 533, 537, 538, 539, 542, 545, 546, 556, 584-86, 831, 832, 833, 834-35, 836, 837, 838, 839, 84-85, 86, 87-88, 89-90, 91, 92-93, 94-95, 96, 97, 98, 99-100, 101-02, 103, 104-05, 112, 113-14, 115-17, 118, 198-200, 201-02, 203-04, 205-08, 209-11, 212-15, 217-18, 221-22, 223-24, 227-30, 236-37, 241, 242, 243, 245, 246-47, 248, 249-50, 251, 252-53, 254-55, 256-57, 258-59, 260-61, 262-64, 265, 266-67, 268, 269, 270-71, 272-73, 274-76, 277-79, 280-84, 285-86, 287-88, 289-91, 292, 343, 344, 345, 346, 465, 466-68, 469, 470-482.

FN19. The three (3) redacted pages released by HHS and challenged by the Commonwealth are Bate-stamp page nos. 496, 557, and 244. With regard to page no. 244, HHS's *Vaughn* indices do not indicate that this page was redacted in any way.

FN20. In addition to the 191 pages of withheld material challenged on March 28, 2006, the Commonwealth now appears to be challenging the exemptions claimed for eleven (11) other pages Bate-stamp page nos. 216, 225-26, 231-32, 233-35, 238-39, and 240-as indicated in Exhibit A to the Rule 56(f) Declaration of Jason W. Manne (Doc. No. 14). However, six (6) of these pages, *i.e.*, page nos. 216, 225-26, 231-32, and 240, appear to have been released without redaction with HHS's *Vaughn* indices, and the Commonwealth does not provide any basis for including these pages in its June 2, 2006 submission, nor is there any evidence of record to suggest that these documents contain redactions. Therefore, the Court concludes that these six (6) pages were listed in error by the Commonwealth and has not included them as part of the total number of challenged pages.

FN21. The following page numbers appear to be duplicates: Page no. 546 is a duplicate of 545; page nos. 556 and 557 are duplicates of page no. 496; page nos. 584-86, 274-76;

277-79, and 289-91 are duplicates of page nos. 526-28; page no. 836 is a duplicate of page no. 537; page no. 837 is a duplicate of page no. 538; page nos. 838 and 112 are duplicates of page nos. 539; page no. 839 is a duplicate of page no. 542; page nos. 113-14 are duplicates of page nos. 834-35; page nos. 272-73 and 285-86 are duplicates of page nos. 497-98; and page nos. 344, 345, and 346 are duplicates of page no. 343.

\*5 On May 3, 2006, HHS filed a Motion for Summary Judgment, brief in support thereof, together with its supporting declarations and documents. In response, the Commonwealth filed a motion to stay the proceedings on HHS's motion for summary judgment pending discovery pursuant to Rule 56(f), along with supporting declaration and brief. The Commonwealth also filed a brief in opposition to HHS's motion for summary judgment which was also included in its brief in support of its Rule 56(f) motion. Both sides filed reply briefs, and pursuant to the order of court dated October 19, 2006, the Commonwealth filed a supplemental brief in opposition to HHS's motion for summary judgment and in support of its Rule 56(f) motion on October 25, 2006. Thus, the pending motions have been fully briefed and are ripe for disposition.

### C. Analysis

FOIA was enacted by Congress for the purpose of "facilitat[ing] public access to Government documents." Davin, 60 F.3d at 1049 (quoting U.S. Dep't of State v. Ray, 502 U.S. 164, 173, 112 S.Ct. 541, 116 L.Ed.2d 526 (1991)). Consistent with the purpose of creating an expedient mechanism for disseminating information and holding government agencies accountable, FOIA directs government agencies to promptly produce any requested materials unless that information is exempt from disclosure pursuant to one of the nine exemptions enumerated in the FOIA statute, 5 U.S.C. § 552(b)(1)-(9). *Id.* (citing Coastal States Gas Corp. v. Dep't of Energy, 644 F.2d 969, 974 (3d Cir.1981) (quoting S.Rep.No. 813, 89th Cong., 1st Sess. 3 (1965)). Thus, the Supreme Court has held that FOIA "creates a strong presumption in favor of disclosure." *Id.* (citing Dep't of Air Force v.

Rose, 425 U.S. 352, 361, 96 S.Ct. 1592, 48 L.Ed.2d 11 (1976)). To this end, FOIA mandates that the district court review *de novo* the agency's decision to withhold requested information. *Id.* (citing 5 U.S.C. § 552(a)(4)(B)); see also McDonnell v. United States, 4 F.3d 1227, 1241 (3d Cir.1993) (citing § 552(a)(4)(B)). The burden of demonstrating that a particular exemption applies falls squarely on the agency. Davin, 60 F.3d at 1049; McDonnell, 4 F.3d at 1241. In addition, the statute requires the agency to disclose "[a]ny reasonably segregable portion of a record ... to any person requesting such record after deletion of the portions which are exempt under [section 552(b)]." 5 U.S.C. § 552(b).

Because "the review of FOIA cases is made difficult by the fact that the party seeking disclosure does not know the contents of the information sought and is, therefore, helpless to contradict the government's description of the information or effectively assist the trial judge," the reviewing court generally will require the government agency to prepare a *Vaughn* index and supporting affidavits to ensure a meaningful adversarial process. Davin, 60 F.3d at 1049 (citing Ferri v. Bell, 645 F.2d 1213, 1222 (3d Cir.1981), modified 671 F.2d 769 (3d Cir.1982)); McDonnell, 4 F.3d at 1241 (citing King v. U.S. Dep't of Justice, 830 F.2d 210, 217-18 (D.C.Cir.1987)). In this regard, the Third Circuit endorsed the following observation of the United States Court of Appeals for the District of Columbia Circuit in *King*, *supra*:

\*6 The significance of agency affidavits in a FOIA case cannot be underestimated. As, ordinarily, the agency alone possesses knowledge of the precise content of documents withheld, the FOIA requester and the court both must rely upon its representations for an understanding of the material sought to be protected. As we observed in *Vaughn v. Rosen*, "[t]his lack of knowledge by the party seeing [*sic*] disclosure seriously distorts the traditional adversary nature of our legal system's form of dispute resolution," with the result that "[a]n appellate court, like the trial court, is completely without the controverting illumination that would ordinarily accompany a lower court's factual determination." Even should the court undertake in camera inspection of the material—an unwieldy process where hundreds or thousands of pages

are in dispute”[t]he scope of the inquiry will not have been focused by the adverse parties....”

Affidavits submitted by a governmental agency in justification for its exemption claims must therefore strive to correct, however, imperfectly, the asymmetrical distribution of knowledge that characterizes FOIA litigation. The detailed public index which in *Vaughn* we required of withholding agencies is intended to do just that: “to permit adequate adversary testing of the agency’s claimed right to an exemption,” and enable “the District Court to make a rational decision whether the withheld material must be produced without actually viewing the documents themselves, as well as to produce a record that will render the District Court’s decision capable of meaningful review on appeal.” Thus, when an agency seeks to withhold information, it must provide “a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.”

McDonnell, 4 F.3d at 1241 (quoting King, 830 F.2d at 218-19) (footnotes omitted). The Court of Appeals in *King* further opined: Specificity is the defining requirement of the *Vaughn* index and affidavit; affidavits cannot support summary judgment if they are “conclusory, merely reciting statutory standards, or if they are too vague or sweeping.” To accept an inadequately supported exemption claim “would constitute an abandonment of the trial court’s obligation under the FOIA to conduct a *de novo* review.”

830 F.2d at 219 (footnotes omitted).

In the case at bar, HHS has filed its *Vaughn* indices and supporting declarations, identifying what it maintains are all of the materials responsive to the Commonwealth’s FOIA requests. HHS submits that its supporting documentation establishes that its search for responsive materials to the Commonwealth’s FOIA requests was reasonable, it released all reasonably segregable, non-exempt information, and that it properly withheld the challenged materials under Exemption (b)(5). Accordingly, HHS submits that it is entitled to summary judgment in its favor.

\*7 In opposition, the Commonwealth submits that the

search affidavits submitted by HHS are deficient on virtually all of the requirements established by the courts for adequate search affidavits and therefore HHS has failed to carry its burden on the adequacy of the search. In addition, the Commonwealth argues that HHS’s affidavits are deficient in that they fail to provide any details regarding the process used to determine that all reasonably segregable factual material has been released and/or to explain why the materials withheld are not reasonably segregable. The Commonwealth contends that Bate-stamped number 545 in the *Vaughn* Index evidences bad faith on the part of HHS with regard to its representation that all reasonably segregable material has been released. Finally, the Commonwealth argues that HHS has not met its burden of proof with regard to the claimed exemptions from disclosure, as most of the entries in the *Vaughn* index have the same conclusory, boilerplate language supporting the claimed exemption and little factual detail is supplied to show why a particular exemption applies to particular documents. In light of these infirmities, the Commonwealth contends that HHS’s motion for summary judgment should be denied and that it should be allowed to conduct limited discovery to flesh out the deficiencies in the HHS submission and to establish a full record for disposition by the Court.

According to the Commonwealth, the key to resolving HHS’s motion for summary judgment is to determine whether the *Vaughn* index and supporting declarations provide an “adequate factual basis” to grant the motion. In order to make this determination, the Commonwealth contends that this Court must answer the following four questions:

1. Do the search affidavits provide an adequate factual basis to establish the reasonableness of the search for documents;
2. Do the *Vaughn* index and affidavits provide an adequate factual basis to show that HHS released all segregable factual material in the withheld documents;
3. Do the *Vaughn* index and affidavits provide an adequate factual basis to establish the claimed exemptions from disclosure in the withheld documents; and
4. If the HHS materials are deficient, is [the Commonwealth] entitled to discovery.

See Pl.’s Br. in Opp’n to HHS’ Mot. for Summ. J. and

in Supp. of its Rule 56(f) Mot. (Doc. Nos. 15 & 16). The Commonwealth submits that the answers to the first three questions must be in the negative, and therefore, it is entitled to discovery, *i.e.*, the fourth question must be answered in the affirmative. Each of these arguments is addressed *seriatim* below.

### 1. Adequacy of Search

Generally, the courts apply a reasonableness standard to determine the adequacy of an agency's search for requested documents, which requires the agency to demonstrate that the search it conducted was "reasonably calculated to uncover all relevant documents." Moore v. Aspin, 916 F.Supp. 32, 35 (D.D.C.1996) (citing Miller v. U.S. Dep't of State, 779 F.2d 1378, 1383 (8th Cir.1985)); *see also* Williams v. U.S. Dep't of Justice, No. 05-2928, 2006 U.S.App. LEXIS 10493, \*4 (3d Cir. Apr. 26, 2006) (citing Oglesby v. U.S. Dep't of Army, 920 F.2d 57, 68 (D.C.Cir.1990)) (agency is obligated to conduct a reasonable search for responsive records); Steinberg v. U.S. Dep't of Justice, 23 F.3d 548, 551 (D.C.Cir.1994) (citing Weisberg v. U.S. Dep't of Justice, 745 F.2d 1476, 1485 (D.C.Cir.1984)) (adequacy of search is judged by a standard of reasonableness). Stated another way, this standard requires the agency to "show that it made a good faith effort to conduct a search for the requested records, using methods which reasonably can be expected to produce the information requested." Moore, 916 F.Supp. at 35 (citing Oglesby, 920 F.2d at 68). However, the reasonableness standard does not mandate a detailed examination of every document maintained by the agency or that the agency search every record system. *Id.* Rather, all that is required is that the search be reasonably calculated to reveal the records sought by the requester. *Id.*; Steinberg, 23 F.3d at 551.

\*8 An agency can satisfy its burden of establishing reasonableness by providing reasonably detailed affidavits, submitted in good faith, "setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched[.]" <sup>FN22</sup> Oglesby, 920 F.2d at 69; Steinberg, 23 F.3d at 551 (citing Weisberg, 745 F.2d at 1485); Miller, 779 F.2d

at 1383 (citing Goland v. Cent. Intelligence Agency, 607 F.2d 339, 352 (D.C.Cir.1978)); Williams, 2006 U.S.App. LEXIS 10493, at \*4-5 (citing Valencia-Lucena, 180 F.3d at 326). Once the agency has met its burden of showing the search was reasonable, the burden then shifts to the requestor to rebut that evidence by demonstrating that the search was not conducted in good faith. Miller, 779 F.2d at 1383 (citing Weisberg v. U.S. Dep't of Justice, 705 F.2d 1344, 1351 (D.C.Cir.1983)). Mere speculation on the requestor's part that uncovered documents may exist will not suffice to rebut the agency's good faith reasonable search. Steinberg, 23 F.3d at 552 (citing Safe-Card Serv., 926 F.2d at 1201).

<sup>FN22</sup> An affidavit describing in general how the agency processed the FOIA request does not satisfy the reasonableness standard. Steinberg, 23 F.3d at 552-52 (citing Weisberg v. U.S. Dep't of Justice, 627 F.2d 365, 371 (D.C.Cir.1980)). The agency affidavits must state which files were searched and by whom, must contain facts showing a systematic approach to document location, thereby providing sufficiently specific information to enable the requestor to challenge the search process engaged in by the agency. *Id.* at 552.

#### *a. Declarations Submitted by HHS*

To satisfy its burden of establishing the adequacy of the search, HHS has produced declarations from the following individuals: Robert Eckert, Katherine Hooten, Diane J. Diggs, Frank T. Connors, and Michael S. Marquis. In asking the Court to deny summary judgment on the adequacy of the search, the Commonwealth submits that these declarations fail to describe in the required detail the files that were searched, by whom, the search terms used, and/or the structure of the agencies' filing systems. Therefore, the Commonwealth argues, the declarations do not describe a systematic approach to document location, nor do they provide sufficient factual information to afford it a meaningful opportunity to contest the search and to allow the district court an adequate factual foundation for judicial review. In support of this argument, the Commonwealth relies primarily on

*Davin and Ogelsby, supra*, and on *Church of Scientology of California v. IRS*, 792 F.2d 146 (D.C.Cir.1986).

On the other hand, HHS contends that its declarations provide sufficient detail regarding the scope and method of the searches conducted, in that the declarants describe the offices to which each request was referred, provide a description of the office, explain why a particular request was referred to a specific office, provide the location of the responsive documents and/or the type of files where the records were maintained. In addition, HHS argues that the declarants also state that all files likely to contain responsive documents were searched. In support of its argument, HHS cites *Perry v. Block*, 684 F.2d 121 (D.C.Cir.1982), and *Judicial Watch, Inc. v. Food & Drug Admin.*, 407 F.Supp.2d 70 (D.D.C.2005), for the proposition that in responding to FOIA requests, an agency is not required to “set forth with meticulous documentation the details of an epic search for the requested records.” *Perry*, 684 F.2d at 126. Rather, HHS argues that all it is required to do is provide “affidavits that explain in reasonable detail and scope the method of the search conducted by the agency.” *Lechliter v. Rumsfeld*, No. 05-4381, 182 Fed. Appx. 113, 116, 2006 WL 1506717, at \*2 (3d Cir. June 1, 2006) (quoting *Perry, supra*). <sup>FN23</sup> Moreover, HHS contends it has disclosed over 900 pages of responsive materials in this case, demonstrating that it searched the appropriate offices, and cites in support thereof, the district court’s decision in *Commw. of Pa. v. U.S. Dep’t of Health & Human Serv.*, 623 F.Supp. 301, 304 (M.D.Pa.1985) (the “1985 case”), which involved a similar FOIA matter. HHS further argues based on the 1985 case, that the Commonwealth in this case has not identified any “blocks of requested information or documents which appear to be missing and which might be discovered by further search of different offices.” *Id.* at 304. Accordingly, HHS submits the Commonwealth’s arguments lack merit and are insufficient to raise a material question of fact regarding the adequacy of the search.

<sup>FN23</sup> In *Lechliter*, the Court of Appeals held that affidavits from employees in the offices determined to be the only ones likely

to possess responsive documents, which indicated in detail their methods for filing documents, described the various files that they searched, and certified that they searched all records systems likely to contain responsive material, were sufficiently detailed to establish that the search was adequate and “reasonably calculated to uncover all relevant documents.” <sup>182 Fed. Appx. at 115-16, 2006 WL 1506717 at \*2</sup> (quoting *Ogelsby*, 920 F.2d at 68).

\*9 With these arguments in mind, the Court now turns to a review of the supporting declarations.

*Declaration of Robert Eckert* <sup>FN24</sup>

<sup>FN24</sup> HHS actually produced two declarations of Robert Eckert: The first one dated April 12, 2006 (“Eckert Decl. I”) addresses the search undertaken pursuant to the five FOIA requests submitted by the Commonwealth. The second declaration of Robert Eckert dated June 19, 2006 (“Eckert Decl. II”) was submitted in response to the Commonwealth’s brief in opposition to HHS’s motion for summary judgment, and addresses the segregability issue discussed *infra* in Part 2.

Robert Eckert is the Director of the Freedom of Information/Privacy Acts (“FOI/PA”) Division, Office of the Assistant Secretary for Public Affairs, Department of HHS. In essence, Eckert is the Freedom of Information Officer for HHS. (Eckert Decl. I at ¶ 1.) As such, his duties include responding to FOIA requests and determining whether to release or withhold records or portions of records in accordance with FOIA and HHS regulations. (*Id.* at ¶ 2.) Upon receipt of the five FOIA requests submitted by the Commonwealth, Eckert forwarded the requests to various offices and divisions within HHS, specifically OIG, ACF and CMS, because the requests sought records from these offices and therefore these offices were reasonably likely to possess responsive documents. (*Id.* at ¶¶ 6-10.) Eckert’s office responded to all five requests, releasing approximately 830 pages of documents and withholding 298 pages pur-

suant to Exemption (b)(5), and withholding small portions of 260 pages under Exemptions (b)(4) and (b)(6). (*Id.* at ¶ 13.) Subsequently, Eckert's office released an additional 94 pages of documents. (*Id.* at ¶ 16.) Eckert further stated that there were no other reasonably likely locations for responsive documents. (*Id.* at ¶¶ 6-10.) Eckert does not provide any other information regarding the search for responsive documents.

#### *Declarations of Katherine Hooten*

HHS produced two declarations from Katherine Hooten. The first one is dated January 13, 2006 ("Hooten Decl. I") and is attached as Exhibit D to HHS's memorandum of law in support of its motion for summary judgment (Doc. No. 9). Katherine Hooten is the Freedom of Information Specialist for ACF and her duties include assembling ACF documents and recommending whether ACF documents should be released or withheld, and identifying corresponding exemptions if withholding is recommended. (Hooten Decl. I at ¶ 1.) Hooten explained that pursuant to a telephone conference she had on July 18, 2005 with counsel for the Commonwealth, Jason Manne, she referred his request in Case No.2005-0952-FW to the Office of Family Assistance ("OFA") and Administration for Children, Youth and Families ("ACYF"). (*Id.* at ¶ 6.) Both offices reported that they did not have any records responsive to the Commonwealth's request. (*Id.*) However, neither office indicated who conducted the search, the search terms used, or identified the particular files searched.

Hooten further explained that she forwarded the Commonwealth's request in Case No.2005-0951-MB to ACYF and HHS Region III, because ACYF is primarily responsible for administering federal child welfare programs and HHS Region III includes the State of Pennsylvania, and therefore, any agreements between ACF and OIG regarding review of Pennsylvania's Title IV-E claims were probably located there. (*Id.* at ¶ 8.) Both locations forwarded responsive documents, some of which were redacted to withhold personal, identifiable information of children in the foster care system. (*Id.*) No other details were provided as to who conducted the search, the

search terms used, or identified the particular files searched. Finally, Hooten stated there were no other likely locations for responsive documents. (*Id.*)

\*10 Hooten next explained that she forwarded the Commonwealth's FOIA request in Case No.2005-1000-RE to ACYF and HHS Region III, because these offices were likely locations of records pertinent to the decision to audit Pennsylvania's title IV-E program. (*Id.* at ¶ 10.) The results of the search located the same documents retrieved in response to the FOIA request in Case No.2005-0951-MB which were forwarded to Eckert. (*Id.*) No other details were provided as to who conducted the search, the search terms used, or identified the particular files searched. Finally, Hooten stated there were no other responsive documents or likely locations for responsive documents. (*Id.*)

In response to the Commonwealth's argument in opposition that Hooten's declaration fails to explain how the searches were conducted, HHS filed the supplemental declaration of Katherine Hooten dated June 21, 2006 ("Hooten Decl. II") (attached as Exhibit J to HHS's Reply Memorandum in Support of its Motion for Summary Judgment and in Opposition to Plaintiff's Rule 56(f) Motion) (Doc. No. 17)). In her supplemental declaration, Hooten provides information regarding who conducted the searches and the files searched in response to the FOIA requests in Case Nos.2005-0952-FW and 2005-0951-MB. In particular, as to the FOIA request in Case No.2005-0952-FW for interagency agreements between OIG and ACF and OIG and CMS, Hooten states that the searches were conducted by a "Program Analyst" within OFA; the "Team Leader for Audit Liaison/Debt Management Team, Division of Financial Integrity, Office of Financial Services, Office of Administration/ACF"; and within ACYF, a "Program Manager in Child Welfare of Region III," a "Policy Specialist," and the "Director of Program Implementation." <sup>FN25</sup> (Hooten Decl. II at ¶ 4.) The program analyst with OFA searched OFA's Program Policy Files, which include the Intranet policy file and the paper program files and contain all of the documents in OFA, for any agreements between OIG and ACF regarding audits of ACF programs. The program analyst also consulted with the Director of

Division of State TANF Policy and they agreed that if any agreement existed it would be located in the Office of Administration. The Team Leader then searched the OIG Website for work plans for fiscal years 2006, 2005 and 2004, without locating any of the requested interagency agreements. Within ACYF, the program manager, policy specialist, and director of program implementation searched all electronic and paper files for any agreements between OIG and ACF regarding audits of ACF programs. Hooten then indicated that there were no other likely locations for responsive documents to the FOIA Request in Case No.2005-0952-FW.

FN25. Hooten does not specifically identify the searchers by name.

The Commonwealth submits that Hooten's supplemental declaration is still deficient with regard to the June 29, 2005 FOIA request for certain interagency agreements with OIG (Case No.2005-0952-FW), as Hooten fails to list the specific files searched or the search terms used, fails to describe the structure of the agency's file systems, and therefore, the declaration fails to provide evidence of a systematic approach to document location. Specifically, the Commonwealth takes issue with Hooten's failure to explain (1) why she limited her search to OFA when the FOIA request covered all programs with ACF, and (2) why it was reasonable for HHS to search OFA Program Policy files when looking for intra-agency agreements which would more likely be found in administrative type files. The Commonwealth further argues that Hooten's assertion that the OFA Intranet policy file and paper program files contain all the documents in OFA fails to take into account any files maintained by individual employees, such as correspondence files and administrative files. Next, although it was determined by the OFA program analyst and Director of Division of State TANF Policy that the Office of Administration was the likely location for any intra-agency agreements, the Commonwealth notes that the team leader does not appear to have searched the files at the Office of Administration, but rather, this unnamed individual searched the "OIG Website for work plans for Fys 2006, 2005, and 2004." The Commonwealth takes issue with both the failure to search the files of the Office of Admin-

istration and Hooten's failure to explain why it is reasonable to search for intra-agency agreements on a website containing work plans, when intra-agency agreements are internal documents that would not ordinarily be publicly posted.

\*11 As to the FOIA request in Case Nos.2005-0951-MB and 2005-1000-RE for any agreements or discussions between, and any decisions by, ACF, David Lett, and/or all ACF staff and OIG, regarding a review or audit of Pennsylvania's Title IV-E claims/programs, Hooten avers in her supplemental declaration that the searches were conducted within ACYF by "several Policy Specialists" and the "Director of Program Implementation"; and within Region III, by a "Program Manager in Child Welfare", a "Grants Officer", and a "Program Specialist in Child Welfare." FN26 (Hooten Decl. II at ¶ 5.) According to Hooten, the files searched by these individuals consisted of "electronic and paper files" within ACYF; "Region III's electronic and paper Title IV-E files"; the "Child Welfare Unit's Title IV-E official program files for Pennsylvania (which contain letters and reports by year);" the "individual electronic files for any emails or reports involving Pennsylvania Title IV-E information;" and the "Regional Office's grants management files for Pennsylvania's Title IV-E program." (*Id.*)

FN26. Hooten does not specifically identify the searchers by name.

The Commonwealth contends that Hooten's supplemental declaration does not evidence a systematic approach to the search conducted by the unnamed policy specialists and the director of program implementation within ACYF because it states only that these unnamed individuals searched unspecified electronic and paper files. Moreover, the Commonwealth contends Hooten fails to provide the search terms used, denote which files were searched, or explain the structure of agency filing system, and fails to indicate whether the files of the individuals involved with Pennsylvania's OIG audits were searched. With regard to the searches conducted within Region III by an unnamed program manager, grants officer and program specialist, the Commonwealth again takes issue with Hooten's failure to specify the search terms



used or explain the structure of the agency files within Region III. In addition, the Commonwealth notes Hooten's supplemental declaration does not indicate that individual employees' *paper* files were searched and withholds the names of the individuals whose electronic files were searched, thereby precluding the Commonwealth from determining whether HHS searched the files of all individuals it knows were involved with the OIG audits.

*Declaration of Diane J. Diggs*

HHS produced one declaration from Diane J. Diggs, dated December 7, 2005 ("Diggs Decl.") which is attached as Exhibit E to HHS's memorandum of law in support of its motion for summary judgment (Doc. No. 9). Diane Diggs is the Freedom of Information Specialist for the Office of Secretary, Office of Inspector General, Department of HHS, and her duties include assembling OIG documents in response to a FOIA request and recommending whether OIG documents should be released or withheld and identifying corresponding FOIA exemptions if withholding is recommended. (Diggs Decl. at ¶ 1.) When she receives a FOIA request from HHS's FOI/PA Division, Diggs stated that she logs it into her database. (*Id.* at ¶ 2.) Diggs then forwards the request to the component within OIG, including OIG regional offices, which she believes may have responsive documents. (*Id.* at ¶ 3.) All five FOIA requests were forwarded to Diggs for processing. (*Id.* at ¶ 4.) With regard to all five FOIA requests, Diggs determined that the Office of Audit Services ("OAS") within OIG was the likely location to have responsive documents because OAS is responsible for: (1) the performance of audits relative to ACF and CMS programs; (2) conducting audits of HHS programs and grantees, including Title IV-E audits; (3) all ongoing audits by OIG of Title IV-E programs; and (4) policy decisions regarding whether a HHS program or grantee should be audited by the OIG. (*Id.* at ¶¶ 6, 8, 10, 11, 13.) Therefore, Diggs forwarded all five FOIA requests to OAS. Documents responsive to all five FOIA requests were located and retrieved from the records maintained in the Audit Office Program Files, photocopied and sent to HHS's FOI/PA Division. (*Id.*) No further information regarding the search is provided. Diggs further stated that there were no other likely locations for respons-

ive records. (*Id.*)

\*12 In response to Digg's declaration, the Commonwealth argues that she fails to explain or otherwise identify the "Audit Office Program Files" and her declaration is uninformative regarding the search methodology.

*Declarations of Frank T. Connors*

HHS produced two declarations from Frank T. Connors. The first one is dated April 13, 2006 ("Connors Decl. I") and is attached as Exhibit F to HHS's memorandum of law in support of its motion for summary judgment (Doc. No. 9). Frank Connors is the Program Analyst for OAS, Office of Inspector General, Department of HHS, and his duties include reviewing FOIA requests, coordinating searches for responsive documents within OAS, and assembling OAS documents for submission to OIG. (Connors Decl. I at 1.) When he receives a FOIA request from OIG, Connors stated that he logs it into his database. (*Id.* at ¶ 4.) Connors received all five FOIA requests from Diane Diggs. (*Id.* at ¶ 5.) With regard to these requests, Connors essentially identifies by title the individuals within OAS, Region III, Grants and Internal Activities ("GIA") Division, and the Office of Counsel to the Inspector General ("OCIG"), with whom he consulted and/or referred the document requests, and explains why these offices/divisions are likely to have any responsive documents. Connors goes on to state whether these individuals located any responsive documents after conducting a search. However, other than indicating that the responsive records were maintained in the "Audit Office Program Files," no other information is given regarding the search terms used, the structure of the agency's file system, or the names of the specific files searched.

In response to the Commonwealth's brief in opposition challenging the sufficiency of Connors' first declaration as completely lacking any details regarding the search terms or methodology used, and the structure of the agency's filing system, HHS filed the supplemental declaration of Frank T. Connors dated June 21, 2006 ("Connors Decl. II") (attached as Exhibit K to the reply memorandum in support of HHS's motion for summary judgment and opposition to

Plaintiff's Rule 56(f) motion (Doc. No. 17)). In his supplemental declaration, Connors first explains that the files in OAS are known simply as "program audit files" or "audit work files." (Connors Decl. II at ¶ 4.) He then goes on to explain, in some detail, the search process employed for the first FOIA request dated June 29, 2005 (Case No.2005-0952-FW). Connors consulted with a senior auditor within OAS who conducted a search of paper and electronic work files for any inter-agency agreements between OIG and ACF regarding the performance of audits going back six years from 2005. (Connors Decl. II at ¶ 5.) Connors also consulted with other staff members and he details the searches conducted by these individuals regarding the second, third and fourth items in this FOIA request.

With regard to OAS's processing of the second FOIA requests dated June 29, 2005 (Case No.2005-0951-MB), Connors explained that a Supervisory Auditor within the GIA Division, a Supervisory Auditor within Region III, and a senior attorney within the OCIG searched paper and electronic audit work files for the period 1997-2002 for all documents, including e-mail, file notes, meeting notices, and correspondence, evidencing or discussing any agreement between ACF, its Regional Administrator, David Lett, and OIG relative to a review of Pennsylvania's Title IV-E claims. (*Id.* at ¶ 6.) Connors further stated that the searches conducted by the Supervisory Auditors at GIA and Region III, and the senior attorney at OCIG located responsive documents maintained in paper and electronic audit work files and these documents were forwarded to him in paper form. (*Id.*)

\*13 With regard to the third FOIA request dated June 30, 2005 (Case No.2005-0953-RE) requesting all documents relating to all child eligibility review instruments used by OIG auditors in ongoing or completed audits of Title IV-E maintenance payments made by States and local governments, Connors explained that a Supervisory Auditor within GIA searched all paper and electronic audit work files for responsive documents and did not locate any documents within the scope of the request. (*Id.* at 7.) Supervisory Auditors within Regions I, II and III also searched all paper and electronic audit work files for

documents responsive to the third FOIA request and located and submitted all responsive documents. (*Id.*) Supervisory Auditors from Regions IV, V and IX each searched paper and electronic audit work files within their respective offices but had no responsive documents. (*Id.*) A senior attorney from OCIG also searched paper and electronic audit work files for documents responsive to the third FOIA request but did not locate any documents within the scope of the request. (*Id.*)

With regard to the fourth FOIA request dated June 30, 2005 (Case No.2005-0954-mb), Connors explained a Supervisory Auditor provided him with the requested list of all ongoing audits of Title IV-E programs in paper form, from an electronic audit work file. (*Id.* at ¶ 8.)

As to the fifth FOIA request dated July 19, 2005 (Case No.2005-1000-RE), requesting all documents post 1997 relating to decisions by ACF and OIG to subject Pennsylvania's Title IV-E program to audit by OIG, including discussions by ACF staff, ACF Regional Administrator David Lett, or OIG staff regarding same, and the decision of OIG to include a cost analysis of Title IV-E provider rates in its audit of Pennsylvania's Title IV-E program, Connors stated that a Supervisory Auditor within GIA, a Supervisory Auditor within Region III, and a senior attorney within OCIG all searched paper and electronic audit work files from 1997 to present for responsive documents. (*Id.* at ¶ 9.) Connors further stated that all three individuals located and forwarded responsive documents maintained in paper and electronic audit work files to Connor in paper form. (*Id.*)

However, in its supplemental reply brief, the Commonwealth challenges Connors' supplemental declaration as still devoid of either a description of the search terms used to search these "electronic" or "paper" files, or the names of the particular folders within the program audit files or audit work files which were searched. The Commonwealth also contends that the search is deficient in that none of the individuals with whom Connors consulted regarding the search for responsive records indicated that the personal filing systems and computer hard drives of individual employees were searched, or that either

the "program audit files" or "audit work files" contained the files of any individuals, including the ACF staff and David Lett.

*Declaration of Michael S. Marquis*

\*14 Finally, HHS presented one declaration from Michael S. Marquis dated January 24, 2006 ("Marquis Decl."), which is attached as Exhibit G to HHS's memorandum of law in support of its motion for summary judgment (Doc. No. 9). Michael Marquis is the Director of the Freedom of Information Group ("FIG"), Office of Strategic Operations and Regulatory Affairs, Centers for Medicare and Medicaid Services ("CMS"), U.S. Department of HHS, and as such, is the Records Access Officer for CMS. Marquis's duties include responding to FOIA requests for records of CMS, determining whether to release or withhold records or portions of records, and overseeing all FOIA activities within CMS. (Marquis Decl. at ¶ 1.) Marquis received from HHS FOI/PA Division one FOIA request dated June 29, 2005 for inter-agency agreements between OIG and CMS for the performance of audits relative to CMS programs (Case No.2005-0952-FW). (*Id.* at ¶ 4.) In his declaration, Marquis identifies the offices/divisions likely to possess responsive documents,<sup>FN27</sup> and the basis for this conclusion, *i.e.*, generally the relationship between the office/division and the documents requested. Marquis does not provide any detail regarding the types of files searched or the structure of the referred offices' file systems. Marquis does indicate that the searches conducted by the offices to whom he forwarded the FOIA request resulted in the retrieval of approximately 174 pages of responsive records from OAGM and OFM, which were forwarded to HHS's FOI/PA Division. (*Id.* at ¶¶ 7, 10.) Marquis further stated that there were no other likely locations for responsive documents and all located responsive documents were provided to HHS's FOI/PA Division. (*Id.* at ¶¶ 9, 12.)

<sup>FN27</sup>. The offices/divisions to which Marquis referred the FOIA request include: Office of Strategic Operations and Regulatory Affairs ("OSORA"); Office of Acquisition and Grants Management ("OAGM"); the Center for Beneficiary Choices ("CBC");

the Center for Medicaid and State Operations ("CMSO"); and CMS's Office of Financial Management ("OFM"). (Marquis Decl. at ¶¶ 5, 6, 8.)

The Commonwealth objects to the sufficiency of the Marquis declaration, for essentially the same reasons given as to the four previous declarations: Failure to identify the specific files searched and to explain the manner in which the search was conducted.

Reviewing the declarations of Eckert, Hooten, Diggs, Connors, and Marquis, the following conclusions can be drawn regarding the adequacy of the searches. Based on the information requested in the five FOIA requests, it was determined by the declarants that responsive materials were most likely located within the following agencies, offices, and/or divisions of HHS: ACF, and its offices/divisions OFA, ACYF; the regional offices of HHS Regions I, II, III, IV, V, and IX; OIG and its offices/divisions OAS, GIA, and OCIG; and CMS and its offices/divisions OSORA, OAGM, CBC, CMSO, and OFM. Collectively, the declarants adequately explained how and why a particular FOIA request was referred to a particular agency/office/division. The declarants also stated that these offices/divisions were searched because they were the likely locations for records responsive to the five FOIA requests submitted by the Commonwealth. In addition, the declarants indicated the filing systems or types of files searched, *i.e.*, "Audit Office Program Files," "Program audit files," or "audit work files," and within these files, whether both paper and/or electronic files were searched, and in some cases, whether individual files maintained by employees/staff were searched. Moreover, the Court notes that through their respective positions within HHS and its offices and divisions, the declarants are charged with the responsibility of processing all FOIA requests referred to HHS or their agency/office/division, and therefore, are deemed to have some expertise in processing FOIA requests. Indeed, the Commonwealth has not pointed to any reason or basis for a contrary conclusion. Accordingly, the Court finds the declarations provide sufficient factual detail to show that the searches were reasonably calculated to uncover the records requested by the Commonwealth and indeed, HHS produced approximately 925 documents (260

pages of which contained redactions of personal information pursuant to Exemptions (b)(4) and (b)(6)), thereby demonstrating that HHS searched the appropriate offices for responsive documents. Inasmuch as the Commonwealth has failed to provide any rebuttal evidence showing the searches were not conducted in good faith, the Court finds HHS has met its burden regarding the adequacy of the search. Therefore, the Court finds that HHS is entitled to summary judgment with regard to the adequacy of the search. <sup>judg-</sup><sub>FN28</sub>

<sup>FN28</sup>. The Court finds no merit to the Commonwealth's argument that HHS's failure to specifically identify the names of the employees and/or staff who maintained individual files and to indicate whether these particular files were searched precludes the Commonwealth from a meaningful opportunity to contest the adequacy of the search. HHS provided the Commonwealth with approximately 925 pages of documents. Certainly, the Commonwealth has had an adequate opportunity to review these documents and determine whether there appear to be any missing documents from individuals with whom the Commonwealth has dealt with regard to the Title IV-E audits and which the Commonwealth has reason to believe exist and were not produced. Yet, in its submissions to this Court, the Commonwealth does not identify any individuals whose records appear to be missing. Accordingly, the Commonwealth's argument amounts to nothing more than speculation as to what types of records might theoretically exist based on its prior dealings with HHS, rather than on any actual evidence of overlooked materials. Such speculation is insufficient to raise an issue of material fact with regard to the adequacy of the search. *Steinberg*, 23 F.3d at 552 (citing *SafeCard*, 926 F.2d at 1201); *Lee*, 235 F.R.D. at 288 (citing *SafeCard*, *supra*).

## 2. Reasonably Segregable Factual Material

\*15 The Commonwealth also challenges the adequacy of HHS's proof in support of its statement that

it has released all reasonably segregable factual information. First, the Commonwealth argues that HHS's declarations and *Vaughn* indices are legally deficient with regard to the required factual details and explanation necessary to show that all reasonably segregable factual information has been released. In support of this argument, the Commonwealth cites *Krikorian v. Dep't of State*, 984 F.2d 461, 466-67 (D.C.Cir.1993), and *Ruggerio v. U.S. Dep't of Justice*, 257 F.3d 534, 553 (6th Cir.2001). Second, the Commonwealth offers evidence of bad faith on the part of HHS with regard to segregability by pointing to one of the withheld pages for which HHS is claiming an exemption under 5 U.S.C. § 552(b)(5), but which the Commonwealth obtained outside the FOIA request, *i.e.*, Bate-stamped page no. 545. With regard to page no. 545, the Commonwealth argues that there are non-exempt portions of that page which reasonably could have and should have been segregable from the exempt portion and therefore disclosed. HHS counters that based on the supplemental declaration of Robert Eckert and its *Vaughn* indices, it has conducted a satisfactory segregability analysis and released all segregable factual material. For the reasons set forth below, the Court finds the Commonwealth's arguments have substantial merit and recommends summary judgment be denied on this issue.

HHS also has the burden of demonstrating that it has released all reasonably segregable portions of each of the withheld documents or portions of documents, or providing a factual recitation as to why certain materials are not reasonably segregable. *Davin*, 60 F.3d at 1052 (citing 5 U.S.C. § 552(a)(4)(B)). Because the emphasis of FOIA is on *information* rather than documents, an agency cannot base withholding an entire document or page of information simply on a showing that it contains some exempt material. *Mead Data Central, Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 260 (D.C.Cir.1977) (emphasis added). In 1974, Congress amended FOIA to specifically incorporate this requirement. See 5 U.S.C. § 552(b) <sup>FN29</sup>. In the District of Columbia Court of Appeals, it has been clearly established that "non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions." *Mead Data Central*, 566 F.2d at 260 (citations omitted).

FN29, Section 552(b) states in relevant part: “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under [§ 552(b) 1].”

In determining whether the agency has satisfied its burden on segregability, the court must narrowly construe the exemptions with the focus on disclosure. Davin, 60 F.3d at 1052 (citing Wightman v. Bureau of Alcohol, Tobacco & Firearms, 755 F.2d 979, 982 (1st Cir.1985)). A conclusory statement to the effect that the agency has provided the requestor with all reasonably segregable portions of the non-exempt information, without any supporting justification, will not satisfy the agency's burden regarding segregability on summary judgment. Davin, 60 F.3d at 1052; Mead Data Central, 566 F.2d at 261. Rather, the agency must provide a detailed justification for its decision that non-exempt material is not segregable, which includes a description of “what proportion of the information in a document is non-exempt and how that material is dispersed throughout the document.” Mead Data Central, 566 F.2d at 261 (footnote omitted). In determining whether the agency has satisfied its burden of proof regarding segregability, the Court of Appeals in Davin required the agency to “describe the process by which [it] determined that all reasonably segregable material of each of the withheld documents or portions of documents had been released” and to “provide a factual recitation of why certain materials [were] not reasonably segregable.” Davin, 60 F.3d at 1052. The Court of Appeals rejected as wholly conclusory a declaration that was “comprised of assertions that documents were withheld because they contain the type of information generally protected by a particular exemption.” *Id.*

\*16 Moreover, it is of no moment for the agency to argue that this process will cause it to incur significantly increased costs. As the Court of Appeals explained in Mead Data Central, these “burdens may be avoided at the option of the agency ... by immediate disclosure.” 566 F.2d at 261. The Court of Appeals further opined:

Requiring a detailed justification for an agency's decision that non-exempt material is not segregable will

not only cause the agency to reflect on the need for secrecy and improve the adversarial position of FOIA plaintiffs, but it will also enable the courts to conduct their review on an open record and avoid routine reliance on in camera inspection. It is neither consistent with the FOIA nor a wise use of judicial resources to rely on in camera review of documents as the principal tool for review of segregability disputes. See Vaughn I, supra, 484 F.2d at 825-26.... If an agency has provided the description and justification suggested by this opinion, a district court need not conduct its own in camera search for segregable non-exempt information unless the agency response is vague, its claims too sweeping, or there is a reason to suspect bad faith. [Weissman v. CIA ], 565 F.2d 692, at 697-698 [ (D.C.Cir.) 1977].

Mead Data Central, 566 F.2d at 216-62 (footnotes omitted).

In the case at bar, the only declaration submitted initially by HHS to satisfy its burden of proving that all reasonably segregable, non-exempt material was released is that of Robert Eckert (Eckert Decl. I).<sup>FN30</sup> At the end of his first declaration, Eckert states in conclusory fashion that “[a]ll reasonably segregable, non-exempt information has been released. For records withheld in their entirety, there was no reasonably segregable, non-exempt information .” (Eckert Decl. I at ¶ 20.) In response to the Commonwealth's argument in opposition that such a conclusory statement without any explanation is insufficient to satisfy its burden, HHS filed the supplemental declaration of Robert Eckert dated June 19, 2006 (“Eckert Decl. II”) (attached as Exhibit L to HHS's Reply Memorandum in Support of its Motion for Summary Judgment and in Opposition to Plaintiff's Rule 56(f) Motion) (Doc. No. 17)). In his supplemental declaration, Eckert states that he evaluated “each individual piece of information with careful consideration to determine segregability.” (Eckert Decl. II at ¶ 5.) In this regard, Eckert further stated:

FN30. HHS also provided the declarations of Michael Leonard (Exhibit H) and Richard Stern (Exhibit I) in support of its motion for summary judgment with regard to its decision to withhold approximately 202 pages

of responsive documents. However, neither of these declarations addresses the decision-making process and/or justification for finding that “[a]ll reasonably segregable, non-exempt information has been released. For records withheld in their entirety, there was no reasonably segregable, non-exempt information.”

Documents were withheld in full either because all the information contained in the documents was exempt from disclosure or the redaction of exempt material would have left only mere templates or unintelligible or meaningless words and phrases because such non-exempt information was so inextricably intertwined with exempt material. For example, in some instances, what would remain after the redaction of the exempt information would have little or no value, amounting to barely more than the date of the draft or the email transmitting such draft and the names of the parties and the subject line—all information contained in the Vaughn index. In other instances, the withheld material contains confidential communications including facts and materials submitted in confidence to an attorney for purposes of seeking legal advice. In still other instances, the withheld material contains attorney work-product, including both factual and deliberative material, prepared in reasonable anticipation of litigation.

\*17 Eckert Decl. II at ¶ 6. Finally, regarding Bate-stamped page no. 545 which HHS withheld in its entirety but which the Commonwealth was able to obtain outside of the FOIA request, Eckert stated that he made the determination to withhold page no. 545 under the deliberative process privilege of Exemption (b)(5), and still maintains that page no. 545 is exempt as deliberative, even after learning that the Commonwealth possessed a copy of that page. (*Id.* at ¶ 7.) Eckert disclaimed any prior knowledge that the Commonwealth possessed page no. 545 or how the Commonwealth came to possess it. (*Id.*)

The Court finds that HHS's supporting evidence is woefully inadequate on segregability. First of all, the explanation of Robert Eckert paints with too broad a brush—he speaks in general terms, without any identification of the specific pages to which the explanation is said to apply. This approach was specifically

rejected by the Courts of Appeals in *Mead Data Central* and *Davin*, *supra*. In addition, for each page withheld in its entirety, HHS fails to provide a factual recitation as to why the information on that page was not reasonably segregable.

Second, the required explanation also cannot be found in the *Vaughn* indices provided by HHS, despite HHS's representation that its *Vaughn* indices “specify in detail which portions of the documents are discloseable and which are exempt.” See Reply Mem. in Supp. of Defs.' Mot. for Summ. J. & Opp'n to Pl.'s Rule 56(f) Mot. at 8. The “Bases for Exemption” set forth in the *Vaughn* Index assert that the documents were withheld because they contain the type of information generally protected by a particular exemption and, in some instances, provide additional detail regarding the contents of the documents to support application of the privilege claimed. However, none of the “Bases for Exemption” offers any explanation or description of how it was determined that all reasonably segregable, non-exempt portions of the documents were released, or that there was no reasonably segregable, non-exempt information.

HHS counters that under the attorney work-product privilege and attorney-client privilege, the release of segregable factual information is not required, and cites in support of this argument, *Commonwealth of PA.*, 623 F.Supp. at 307 (release of segregable factual information is not required with regard to material appropriately withheld under the attorney work-product privilege). While that may be an accurate statement of the law, HHS must first demonstrate the applicability of the attorney work-product privilege under Exemption (b)(5) to the withheld pages in this case. As explained below, HHS has failed to satisfy its burden of proof in claiming the attorney work-product privilege. Accordingly, to the extent HHS has rested its segregability analysis on the attorney work-product privilege, its analysis is likewise flawed.

Third and finally, the Commonwealth has presented actual evidence of bad faith on the part of HHS relative to segregability. In this regard, the Commonwealth argues that the first paragraph on page no. 545

contains obviously segregable factual background material that was withheld without justification or explanation. Although the *Vaughn* Index describes page no. 545 as containing predecisional opinions and strategy, the Commonwealth submits that in actuality, the page communicates the fact that the Commonwealth rejected a settlement offer, and that OAS “may initiate completion of the review that began in 2000, pursuant to the agreement between ACF and the Office of the Inspector General...” See Pl.’s Br. in Opp’n to HHS’ Mot. for Summ. J. & in Supp. of its Rule 56(f) Mot. at 18 (quoting *Vaughn* Index of Withheld Documents from HHS Release Dated Jan. 5, 2006 for Case Nos. 2005-1000RE and 2005-951MB at 18 (attached as Ex. 9 to Eckert Decl. I).) The Commonwealth contends that this page is clearly a non-exempt, post-decisional document that communicates a decision to another HHS component, and therefore, neither the claimed exemption nor the description in the *Vaughn* Index are supportable.

\*18 The Court finds that the Commonwealth’s point regarding page no. 545 is well-taken. An examination of page no. 545 reveals that the first paragraph <sup>FN31</sup> does indeed contain segregable, non-exempt, factual background information that does not involve predecisional opinions and strategy, as does the third paragraph. <sup>FN32</sup> Moreover, this factual information does not appear to be inextricably intertwined with exempt material, nor does it reveal the deliberative process within ACF, OAS, or OIG. Accordingly, at the very least, the first and third paragraphs of page no. 545 should have been released as segregable, non-exempt factual information. <sup>FN33</sup> The fact that HHS still maintains that page no. 545 is exempt in its entirety as deliberative, after receiving the Commonwealth’s challenge, is troublesome.

<sup>FN31</sup> The first paragraph of page no. 545 states: “Attached is correspondence from the Secretary, Pennsylvania Department of Public Welfare (DPW), that declined acceptance of the Administration for Children and Families’ (ACF) settlement offer pertaining to recovery of overpayments for ineligible recipients in the Title IV-E Foster Care Program for Federal Fiscal Years 1998, 1999, and 2000.” See Exhibit B to Pl.’s Rule 56(f) De-

claration dated June 2, 2006 (Doc. No. 14).

<sup>FN32</sup> The third paragraph of page no. 545 reads as follows: “If you have any questions, please contact me at 215/861-4000, or have your staff contact Michael Rolish, Grants Officer, at (215) 861-4016.” See *id.*

<sup>FN33</sup> Arguably, the only portion of page no. 545 that falls within the deliberative process privilege is the second paragraph, which states: “The Office of Audit Services may initiate completion of the review that began in 2000, pursuant to the agreement between the ACF and the Office of Inspector General, to determine the full extent to which DPW’s claims are ineligible for FFP.” See *id.* This argument is addressed in Part 3, *infra.*

Accordingly, the Court finds that HHS has failed to satisfy its burden of proof with regard to segregability and therefore recommends that summary judgment be denied on this issue.

### 3. Withholding Documents Based on Exemption (b)(5)

In this case, the claimed exemption for the 196 pages of responsive materials in dispute is Exemption (b)(5) of FOIA, which allows a government agency to withhold responsive records to a FOIA request that consist of “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency[.]” 5 U.S.C. § 552(b)(5). Stated another way, “if a particular document falls within a recognized evidentiary privilege and, hence, would not normally be discoverable by a private party in the course of civil litigation with the agency, then the document likewise falls within the scope of Exemption 5 and is not releasable under the FOIA.” <sup>FN34</sup> *Jordan v. U.S. Dep’t of Justice*, 591 F.2d 753, 772 (D.C. Cir. 1978), *overruled in part on other grounds in Crooker v. Bureau of ATF*, 670 F.2d 1051 (D.C. Cir. 1981) (en banc). This exemption has been construed to encompass three privileges: the deliberative process privilege, the attorney work-product privilege, and the at-

torney-client privilege. See EPA v. Mink, 410 U.S. 73, 85-90, 93 S.Ct. 827, 35 L.Ed.2d 119 (1973) (deliberative process privilege); NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 154, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975) (attorney work-product privilege); and Mead Data Central, 566 F.2d at 252-55 (attorney-client privilege). All three of these privileges have been asserted by HHS in this case.<sup>FN35</sup>

<sup>FN34</sup>. Although roughly based on discovery principles, exemption (b)(5) differs fundamentally in that a key ingredient for discovery, relevance, plays no part in FOIA cases. Coastal States Gas Corp. v. Dep't of Energy, 617 F.2d 854, 862 (D.C.Cir.1980) (citing EPA v. Mink, 410 U.S. 73, 86, 93 S.Ct. 827, 35 L.Ed.2d 119 (1973)); see also Mead Data Central, 566 F.2d at 252 (citing EPA v. Mink, *supra*).

<sup>FN35</sup>. HHS claims the deliberative process privilege as to all 202 withheld pages, and for 104 of these pages, it is also claiming the attorney-client privilege; it is also claiming the attorney-work product privilege for 133 of the 202 withheld pages.

In support of its motion for summary judgment on the issue of withholding under Exemption (b)(5), HHS argues that it has provided sufficient descriptions for each withholding in its *Vaughn* indices to satisfy its burden on summary judgment to show that the documents or information are exempt from disclosure under Exemption (b)(5). HHS further argues that paragraphs 18 and 19 of Eckert's first declaration, as well as the declarations of Stern and Leonard, underscore that the documents withheld under Exemption (b)(5) generally consisted of drafts, predecisional advice, recommendations, suggestions, opinions, as well as confidential attorney-client communications and attorney work-product concerning an audit of Pennsylvania's foster care program, and therefore, HHS has demonstrated that it reasonably withheld the challenged documents under FOIA Exemption (b)(5).

\*19 The Commonwealth disputes that the *Vaughn* indices and declarations submitted by HHS provide sufficient detail to support the claimed privileges and

therefore argues HHS has failed to carry its burden to entitle it to summary judgment on this issue.

#### *The Attorney-Client Privilege*

The attorney-client privilege is intended to protect "only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege." Coastal States Gas Corp., 617 F.2d at 862-63 (quoting Fisher v. United States, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976)).<sup>FN36</sup> The purpose behind this privilege is to encourage a relationship of trust and free discussion between attorneys and their clients. *Id.* at 862; Mead Data Central, 566 F.2d at 253. Therefore, the application of this privilege is not restricted to communications that are made in relation to litigation or to a particular dispute, but extends to all situations in which an attorney's counsel is sought on a legal matter. Coastal States Gas Corp., 617 F.2d at 862. However, a fundamental prerequisite to assertion of the privilege is the demonstration of "confidentiality both at the time of the communication and maintained since. The burden is on the agency to demonstrate that confidentiality was expected in the handling of these communications, and that it was reasonably careful to keep this confidential information protected from general disclosure." *Id.* at 863. The test applied by the courts in determining confidentiality is "whether the agency is able to demonstrate that the documents, and therefore the confidential information contained therein, were circulated no further than among those members 'of the organization who are authorized to speak or act for the organization in relation to the subject matter of the communication.'" *Id.* (quoting Mead Data Central, 566 F.2d at 253 n. 24). "If the information has been or is later shared with third parties, the privilege does not apply." Mead Data Central, 566 F.2d at 253 (footnote omitted).

<sup>FN36</sup>. There is no question that this privilege applies to agency attorneys and their clients, *i.e.*, the agencies. See, *e.g.*, Coastal States Gas Corp., 617 F.2d at 863; Mead Data Central, 566 F.2d at 252.

One of the measures used to determine confidentiality is the degree of care exhibited in the handling of



the documents. *Coastal States*, 617 F.2d at 864. In this regard, the courts should ask what evidence exists to indicate that the person requesting the advice from the agency attorney had any expectation of confidentiality. *Id.* In *Coastal States*, the court of appeals found there was no evidence in the record from which it could conclude that there was any expectation of confidentiality. In support of its conclusion, the court of appeals noted the agency failed to establish that some attempt had been made to limit disclosure of the confidential documents to appropriate agency personnel, or that it made any attempt at all to protect the confidential communications within the agency, as the agency admitted that it did not know who had access to the documents, and undisputed testimony existed to the effect that in some regions copies of the memoranda were circulated to all area offices, filed and indexed for future reference, relied on as precedent, and used as training materials for new personnel. *Id.* at 863-64.

\*20 In a prior FOIA case between the same parties to the instant litigation, the district court found that HHS failed to establish the confidentiality of the documents for which it was claiming nondisclosure under the attorney-client privilege. In the 1985 case between the Commonwealth and HHS, HHS provided a *Vaughn* index and two affidavits in support of its claimed exemptions for withholding fifteen documents. 623 F.Supp. at 305. The *Vaughn* index in the 1985 case set forth the date, author, recipient, subject matter, length of each document, the circumstances of its preparation, and the exemptions being claimed. The affidavits of two agency attorneys provided greater detail regarding the preparation of the withheld documents, 11 out of 15 of which were claimed to have been generated in preparation for litigation before the Grant Appeals Board. Although the district court found that given the detail of its affidavits and *Vaughn* index, HHS met its burden of providing the Commonwealth with sufficient information to effectively challenge the claimed exemptions for 15 documents, the court nonetheless concluded that HHS had not met its burden of proving the application of the attorney-client privilege to 8 of the withheld documents. *Id.* at 305-06. The district court found that at best, the *Vaughn* index and affidavits

showed only that documents 2-9 were intended to be confidential at the time they were made. *Id.* The district court found lacking any assertion or proof that the matter discussed in the documents remained confidential at the present time, "or that the documents were circulated only to those in the agency authorized to speak or act for the agency on the subject matter of the communications." *Id.* at 306.

In the present action, HHS asserts the attorney-client privilege for 104 of the 196 withheld pages,<sup>FN37</sup> and in support thereof, offers the explanations contained in its *Vaughn* indices supplemented by the declarations of Michael Leonard and Richard Stern. In its *Vaughn* indices, HHS states as the basis for claiming the attorney-client privilege, for almost all of the pages withheld under this privilege, that "in addition," or "further," or "moreover," "the withheld material contains confidential attorney-client communications." This is the only explanation provided in the *Vaughn* indices for 81 of the pages withheld under the attorney-client privilege.<sup>FN38</sup> These 81 pages contain the following Bate-stamp page numbers: 490-91, 499, 500-06, 512, 529, 530, 533, 542, 831, 832, 839, 84-85, 89-90, 92-93, 97, 99-100, 101-02, 103, 104-05, 205-08, 209-11, 212-15, 223-24, 241, 242, 243, 248, 249-50, 251, 252-53, 254-55, 256-57, 258-59, 260-61, 262-64, 265, 266-67, 268, 269, 270-71, 280-84, 287-88, 292, and 465. This explanation alone is clearly insufficient to establish the confidentiality of the information contained in the withheld pages.

<sup>FN37</sup> The attorney-client privilege is asserted for the following Bate-stamp page numbers: 490-91, 499, 500-06, 512, 526-28, 529, 530, 533, 538, 539, 542, 584-86, 831, 832, 837, 838, 839, 84-85, 89-90, 92-93, 97, 99-100, 101-02, 103, 104-05, 112, 205-08, 209-11, 212-15, 223-24, 233-35, 241, 242, 243, 248, 249-50, 251, 252-53, 254-55, 256-57, 258-59, 260-61, 262-64, 265, 266-67, 268, 269, 270-71, 274-76, 277-79, 280-84, 287-88, 289-91, 292, and 465. In its opening memorandum of law in support of its motion for summary judgment ("HHS's opening memorandum"), HHS includes Bate-stamp page nos. 496, 556, 557, and

833 in the list of pages withheld under the attorney-client privilege. (Doc. No. 9, at page 25) However, an examination of the *Vaughn* indices reveals that the only claimed privilege for page nos. 496, 556, 557, and 833 is the deliberative process privilege. In addition, page nos. 233-35 are not included in HHS's list in its opening memorandum because these pages were added by the Commonwealth in its June 2, 2006 submission which post-dates the filing of HHS's opening memorandum.

FN38. Although the *Vaughn* indices do list the author and recipients of the documents (in most instances), the Court has no way of knowing if these individuals are authorized to act or speak on behalf of the agency on the subject matter of the communication.

For Bate-stamp page numbers 538, 539, 837, 838, and 112, the only explanation given by HHS in its *Vaughn* indices is "In addition, the withheld material contains confidential attorney-client communications pertaining to a legal matter for which client has sought professional advice." For three (3) pages, Bate-stamp page nos. 233-35, no explanation is given in the *Vaughn* index, other than the initial claim that the "withheld material is protected by the ... attorney-client privilege..." Again, these explanations alone are clearly insufficient to establish confidentiality.

\*21 For 15 of the withheld pages under this privilege, Bate-stamp page nos. 526-28, 584-86, 274-76, 277-79, and 289-91, HHS provides the same statement as provided for the above 81 pages, but also adds that "The document is clearly marked as 'CONFIDENTIAL-ATTORNEY/CLIENT PRIVILEGED MEMORANDUM.'" While such a designation on the pages demonstrates the existence of an expectation of confidentiality, it still falls short of the required showing. Just because a document is designated as "CONFIDENTIAL-ATTORNEY/CLIENT PRIVILEGED" does not mean that the Court can assume that the information contained therein was continually maintained as such. HHS asks this Court to make too great of a leap, especially since it bears the burden of proving that the claimed privilege applies.

HHS must meet this burden by providing evidence, either through affidavit or some other means, that established that the particular confidential materials have not been circulated beyond those authorized to speak on its behalf on the subject matter contained in the communication.

The Declaration of Michael Leonard ("Leonard Decl.") fails to add anything to support the application of the attorney-client privilege. Leonard is an attorney in Region III of the Office of the General Counsel (OGC) of HHS and he either authored or received nine (9) of the pages withheld by HHS. (Leonard Decl. at ¶¶ 1, 5.) Leonard addresses the attorney-client privilege claimed for seven (7) of these pages, Bate-stamp page numbers 490-91, 529, 530, and 262-64, in his declaration. However, he does not provide any more information or explanation regarding page numbers 529, 530, and 262-64, than that already contained in the *Vaughn* indices. (Leonard Decl. at ¶¶ 10-12.) For page nos. 490-91, Leonard adds only that he provided input into the draft letter and advice to HHS employees concerning the letter. (*Id.* at ¶ 7.) Leonard's declaration is completely devoid of any proof that there was an expectation of confidentiality or that the materials containing the confidential information were circulated no further than among the employees of HHS who are authorized to speak or act on behalf of it in relation to the subject matter of the communication.

Likewise, the Declaration of Richard Stern ("Stern Decl.") does not add significantly to the explanations provided in the *Vaughn* indices for the attorney-client privilege. Stern is an attorney in the OCIG of the OIG of HHS, and he either authored or received 85 of the pages withheld by HHS. (Stern Decl. at ¶¶ 1, 4-5.) Sixty (60) of these pages were withheld on the basis of the attorney-client privilege. For the following Bate-stamp page numbers, Stern stated merely that the pages contain a confidential exchange of emails between himself and agency attorneys and employees concerning either a draft document to the Commonwealth of Pennsylvania, or an audit of Pennsylvania's Title IV-E Foster Care Program or the Title IV-E audit: 490-91, 831, 832, 84-85, 90-90, 92-93, 101-02, 103, 241, 249-50, 251, 252-53, 254-55, 256-57, 258-59, 260-61, 262-64, 265, 266-67, 268, 269,

270-71, and 292. (*Id.* at ¶¶ 7, 9-11, 14, 16, 21-22, 32, 35-48.) Stern's explanation is simply a reiteration of that given in the *Vaughn* indices. For Bate-stamp page numbers 500-06, 104-05, 112, 209-11, 212-15, 223-24, 242, and 243, Stern stated that the pages contain a confidential legal memorandum, prepared by him to agency attorneys and/or employees regarding the audit of Pennsylvania's foster care claims or its Title IV-E program. (*Id.* at ¶¶ 8, 23-24, 29-31, 33.) Again, Stern's explanation adds nothing to the *Vaughn* indices. Finally, Stern stated that Bate-stamp page numbers 99-100 contain a confidential exchange of emails between himself and an agency attorney and agency employees regarding Title IV-E regulations. (*Id.* at ¶ 20.) Stern's explanation is simply a reiteration of that given in the *Vaughn* indices. However, at the end of his declaration, Stern makes the following statement with regard to all of the pages he authored or received:

**\*22** The documents at issue contain confidential communications from OIG to me as OIG's attorney and vice versa, for the purpose of advising and assisting OIG, and in a few instances, their HHS partner in these activities, ACF, with legal issues. My advice in these communications was advisory in nature and did not represent statements of agency policy or the final agency decision on a particular matter. OIG attorneys provide options and advice to OIG, which the agency can choose to adopt or not, depending on both legal consequences and other policy considerations. *Moreover, both the attorneys and clients who received these communications had a clear expectation that they would remain confidential. Indeed, all e-mail communications from the Office of Counsel to the Inspector General include a warning that they contain information protected by the attorney-client, attorney work product, deliberative process, or other privilege, or protected by Federal confidentiality laws.*

*Id.* at ¶ 49 (emphasis added). Based on Stern's statement in paragraph 49, HHS has offered some evidence of an expectation of confidentiality. However, this offer of proof still falls short of the mark. Despite his statement that all e-mail communications from the Office of Counsel to the Inspector General contain a warning that the information contained therein is pro-

tected by various privileges, there is no indication in the *Vaughn* indices that this warning appears on the emails.<sup>FN39</sup> Moreover, most law firms and corporate and government legal departments include this warning on all of their emails as a matter of course. That does not mean, however that all of the information contained in those emails is confidential, or has continued to remain confidential. At best, Stern's declaration establishes an expectation of confidentiality at the time the document was drafted, but as explained earlier, this alone is not enough to carry HHS's burden. It is clear from the above case law that HHS must also establish that the pages for which it is claiming the attorney-client privilege were not circulated to any persons not authorized to speak on its behalf regarding the subject matter or to third parties. Currently, there is nothing in the record that allows the Court to make this conclusion.

<sup>FN39</sup> Yet, for Bate-stamp page nos. 526-28, 584-86, 274-76, 277-79, and 289-91, HHS's explanation of the attorney-client privilege included the confidentiality designation.

Since HHS bears the burden of proof on the application of a claimed exemption and it has failed to do so based on the attorney-client privilege, HHS will not be entitled to summary judgment on its withholding of the 104 pages unless it demonstrates that these within Exemption (b)(5) for some other reason.<sup>FN40</sup>

<sup>FN40</sup> A great deal of overlap exists between the attorney-client privilege and the deliberative process privilege of Exemption (b)(5), with respect to materials containing legal opinions and advice. *Mead Data Central*, 566 F.2d at 254 n. 28. However, these two privileges are distinct in that the "attorney-client privilege permits nondisclosure of an attorney's opinion or advice in order to protect the secrecy of the underlying facts, while the deliberative process privilege directly protects advice and opinions and does not permit the nondisclosure of underlying facts unless they would indirectly reveal the advice, opinions, and evaluations circulated within the agency as part

of its decision-making process.” *Id.* (emphasis added). Moreover, the courts have held that if withheld materials are exempt only based on the deliberative process privilege, the agency is required to describe the factual content of the materials and disclose it or provide an adequate justification for concluding that it is not segregable from the exempt portions of the materials. *Id.*

#### Attorney Work-Product Privilege

HHS also asserts the attorney work-product privilege as a basis for withholding 133 pages of responsive material.<sup>FN41</sup> This privilege “protects disclosure of materials prepared by attorneys, or non-attorneys supervised by attorneys, in contemplation of litigation, that reveal information about an attorney’s preparation and strategy relating to a client’s case.” *Judicial Watch, Inc. v. U.S. Postal Serv.*, 297 F.Supp.2d 252, 268 (D.D.C.2004) (citing *Coastal States*, 617 F.2d at 866); *Wilderness Society v. U.S. Dep’t of Interior*, 344 F.Supp.2d 1, 17 (D.D.C.2004) (citing *Judicial Watch, supra*). The purpose of the attorney work product privilege is to provide “a working attorney with a ‘zone of privacy’ within which to think, plan weigh facts and evidence, candidly evaluate a clients case, and prepare legal theories.” *Coastal States*, 617 F.2d at 864. Moreover, factual information in attorney work-product will also be protected unless the requesting party can demonstrate a substantial need for the material and an inability to obtain it without suffering undue hardship. *Judicial Watch*, 297 F.Supp.2d at 268 (citing *Fed.R.Civ.P.* 26(b)(3); *Putnam v. U.S. Dep’t of Justice*, 873 F.Supp. 705, 711 n. 4 (D.D.C.1995)). “The work-product privilege can be waived, however, if the work product is disclosed to a third party who does not share a ‘common interest in developing legal theories and analyses of documents’ with the primary party.” *Id.* (quoting *In re Sealed Case*, 676 F.2d 793, 817 (D.C.Cir.1981)) (other citations omitted).

<sup>FN41</sup> The attorney work-product privilege is asserted for the following Bate-stamp page numbers: 490-91, 492-93, 497-98, 499, 500-06, 512, 517, 518-19, 526-28, 529, 530, 533, 542, 584-86, 831, 832, 839, 84-85, 86,

87-88, 89-90, 91, 92-93, 94-95, 96, 97, 101-02, 104-05, 115-17, 205-08, 209-11, 212-15, 217-18, 221-22, 223-24, 233-35, 241, 242, 243, 245, 246-47, 248, 249-50, 251, 254-55, 256-57, 258-59, 260-61, 262-64, 265, 266-67, 268, 269, 270-71, 272-73, 274-76, 277-79, 280-84, 285-86, 289-91, 292, 465, and 470-82.

\*23 The cornerstone of this privilege is that the documents were prepared in anticipation of litigation. *Id.* (citing *Jordan*, 591 F.2d at 775) (emphasis added). Therefore, the attorney work product privilege may only be invoked to exempt those documents prepared in anticipation of litigation, and not “ ‘every written document generated by an attorney.’ ” *Judicial Watch*, 297 F.Supp.2d at 268 (quoting *Senate of the Commw. of Puerto Rico v. U.S. Dep’t of Justice*, 823 F.2d 574, 586 (D.C.Cir.1987)). The agency’s burden of proving application of the attorney work-product privilege is two-fold: The agency must (1) show that the “documents must at least have been prepared with a specific claim supported by concrete facts which would likely lead to litigation in mind,” *Coastal States*, 617 F.2d at 865, and (2) “provide some indication whether the documents have been shared with third parties, which would amount to a waiver of the privilege”<sup>FN42</sup>, *Wilderness Society*, 344 F.Supp.2d at 17 (citing *Judicial Watch*, 297 F.Supp.2d at 268). As to the first requirement, there must be some “indication in the *Vaughn* index or affidavits that there was even the dimmest expectation of litigation when the [ ] documents were drafted.” *Coastal States*, 617 F.2d at 865 (emphasis added).

<sup>FN42</sup> The district court in *Judicial Watch* explained that in a normal, adversarial proceeding in which the parties are presumed to have equal access to the facts, on a waiver of privilege claim, the party asserting waiver would have the burden of proving that the privilege had been waived. However, in a FOIA case, where the agency possesses almost exclusive access to the facts, the court has required the agency to prove that it has not waived the privilege because the requester is not in a position to disprove it. 297 F.Supp.2d at 269 (citing *King v. U.S.*

Dep't of Justice, 830 F.2d 210, 218 (D.C.Cir.1987).

In *Judicial Watch*, *Wilderness Society*, and *King*, the courts refused to allow the agencies to withhold documents pursuant to the attorney work product privilege because in all three cases, the agencies failed to provide the courts with sufficient facts, in either their affidavits or *Vaughn* indices, to allow the courts to conclude that specific claims had arisen and were likely to be pursued to the point of litigation by the agency.

Similarly, in the case at bar, HHS fails to provide both the court and the Commonwealth with sufficient facts in either its declarations or *Vaughn* indices to determine whether the work product privilege applies to each of the claimed 133 pages. Indeed, the *Vaughn* indices for the 133 pages withheld pursuant to the attorney work product privilege state merely that the "withheld material is an intra-agency memorandum containing predecisional analysis and opinions concerning the audit of Pennsylvania's Title IV-E program ... [and] contains confidential ... attorney work-product, prepared in reasonable anticipation of litigation or administrative proceedings between HHS and Pennsylvania." This explanation is stated for each of the 133 pages claimed as exempt under the attorney work product privilege. In addition, the declarations of Michael Leonard and Richard Stern fail to provide the necessary detail for the court to determine that these pages were drafted in anticipation of litigation. As to establishing this requirement, both declarations are utterly devoid of detail, stating only that "[t]he documents at issue were either obtained or prepared in contemplation of litigation with the Commonwealth of Pennsylvania concerning an audit of Pennsylvania's Title IV-E program." Stern Decl. at ¶ 52; Leonard Decl. at ¶ 16. Stern goes on to state that "[i]ndeed, a large majority of the documents reflect [his]own legal opinions and mental processes prepared in anticipation of the very litigation that Pennsylvania has initiated in [*Commw. of PA Dep't of Public Welfare v. United States, U.S. Dep't of Health & Human Serv.*, C.A. No. 05-1345 (W.D.Pa.) ]. Stern Decl. at ¶ 52. However, what Mr. Stern and HHS have failed to realize is that they have provided no factual basis for the Court to make the giant leap they

suggest between the dates the documents were created (many of which occurred in 2000), and the litigation filed in 2005 as to how those documents could have been prepared in anticipation of litigation when the litigation was not filed, in many instances, until 5 years later.

\*24 There is no indication at the time the particular document was drafted what claims or litigation were anticipated, especially since there may have been numerous audits of Pennsylvania's Title IV-E programs since 1997, and it is not clear whether every audit resulted in some sort of claim, administrative proceeding, or federal court case. For each document or page claimed as exempt under the attorney work-product privilege, HHS must identify the particular audit (by date or some other basis) which it anticipated would result in litigation (including an administrative proceeding), and specifically identify the administrative proceeding and/or federal court case which resulted, if any. In addition, HHS provides no indication of whether the documents have been shared with third parties and, therefore, whether the privilege has been waived. For example, if agency attorneys prepared any of these documents in response to litigation, and had filed substantially similar material with a court or other administrative body such that they were publicly available, HHS would have waived the privilege.

For these reasons, HHS has failed to satisfy its burden of proving that the 133 pages are exempt from disclosure pursuant to the attorney work-product privilege. Therefore, unless HHS demonstrates that these documents fall within Exemption (b)(5) under the deliberative process privilege, the Court will not be able to find that HHS is entitled to summary judgment in its favor on the withheld documents.

#### *Deliberative Process Privilege*

HHS has invoked the deliberative process privilege of Exemption (b)(5) as the basis for withholding all of the pages challenged by the Commonwealth. This privilege "protects from disclosure 'documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.'"

' *Wilderness Society*, 344 F.Supp.2d at 10 (quoting *Dep't of Interior & Bureau of Indian Affairs v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8, 121 S.Ct. 1060, 149 L.Ed.2d 87 (2001) (other citation omitted)). "The purpose of the deliberative process privilege is to ensure open communication between subordinates and superiors, prevent premature disclosure of policies before final adoption, and to avoid public confusion if grounds for policies that were not part of the final adopted agency policy happened to be exposed to the public." *Id.* (citing *Defenders of Wildlife v. U.S. Dep't of Agric.*, 311 F.Supp.2d 44, 57 (D.D.C.2004)); see also *Coastal States*, 617 F.2d at 866 (citing *Jordan*, 591 F.2d at 772-74). The critical question, therefore, in determining whether an agency has met its burden of proof as to the deliberative process privilege, is whether " 'disclosure of [the] materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.' " *Wilderness Society*, 344 F.Supp.2d at 10 (quoting *Formaldehyde Inst. v. Dep't of Health & Human Serv.*, 889 F.2d 1118, 1122 (D.C.Cir.1989)) (other citation omitted).

\*25 In order to withhold documents under the deliberative process privilege, an agency must demonstrate that its decision is both (1) predecisional and (2) deliberative. *Coastal States*, 617 F.2d at 866; *Wilderness Society*, 344 F.Supp.2d at 10 (citing *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 39 (D.C.Cir.2002); *Judicial Watch*, 297 F.Supp.2d at 259 (citations omitted)). "A document is predecisional if it was 'prepared in order to assist an agency decision-maker in arriving at his decision,' rather than to support a decision already made." *Wilderness Society*, 344 F.Supp.2d at 10 (quoting *Petroleum Info. Corp. v. U.S. Dep't of Interior*, 976 F.2d 1429, 1434 (D.C.Cir.1992) (other citation omitted)). In other words, a predecisional document is one that is " 'antecedent to the adoption of agency policy.' " *Judicial Watch*, 297 F.Supp.2d at 259 (quoting *Jordan*, 591 F.2d at 774). An agency will satisfy its burden as to the predecisional requirement if it "pinpoints[s] an agency decision or policy to which the document contributed," *Senate of Puerto Rico*, 823 F.2d at 585,

or "identif [ies] a decision-making process to which a document contributed", *Judicial Watch*, 297 F.Supp.2d at 259 (citation omitted).

As to the second requirement, that the document be deliberative, the agency must show that the document is " 'a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.' " *Wilderness Society*, 344 F.Supp.2d at 11 (quoting *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C.Cir.1975)) ("Vaughn II"); *Judicial Watch*, 297 F.Supp.2d at 259 (citing same). The deliberative document "must reflect the 'give-and-take of the consultative process.' " *Wilderness Society*, 344 F.Supp.2d at 11 (quoting *Senate of Puerto Rico*, 823 F.2d at 585). "In determining whether the deliberative process privilege should apply to a particular document, courts often look at "the nature of the decision making authority vested in the officer or person issuing the disputed document,' and the relative position in the agency's 'chain of command' occupied by the document's author and recipient.'" *Id.* (quoting *Animal Legal Defense Fund, Inc. v. Dep't of Air Force*, 44 F.Supp.2d 295, 301 (D.D.C.1999)). In this regard, generally employee to supervisor correspondence is more likely than other intra-agency communications to be exempt under the deliberative process privilege. *Judicial Watch*, 297 F.Supp.2d at 264 (citing *Access Reports v. Dep't of Justice*, 926 F.2d 1192, 1195 (D.C.Cir.1991)) ("A document from a junior to a senior is likely to reflect his or her own subjective opinions .... By contrast, one moving from senior to junior is far more likely to manifest decisionmaking authority and to be the denouement of the decisionmaking rather than part of its give and take.") (citing *Senate of Puerto Rico*, 823 F.2d at 586; *Coastal States*, 617 F.2d at 868)). Also, simply because a document has been designated as a "draft" does not automatically entitle the agency to withhold it based on the deliberative process privilege. *Wilderness Society*, 344 F.Supp.2d at 14 (citing *Arthur Andersen & Co. v. I.R.S.*, 679 F.2d 254, 257 (D.C.Cir.1982)). For each document designated as a "draft," the agency must indicate whether the "draft" was " '(1) 'adopted formally or informally, as the agency position on an issue;' or (2) 'used by the agency in its dealings with the public.' " *Id.* (quoting

Judicial Watch, 297 F.Supp.2d at 261).

\*26 Generally, factual information contained in a document which is withheld pursuant to the deliberative process privilege must be disclosed. Judicial Watch, 297 F.Supp.2d at 261 (citing Petroleum Info. Corp., 976 F.2d at 1434; Mead Data Central, 566 F.2d at 256). However, where the factual material may expose the policy judgments or reasoning of the author, and therefore the deliberative process of the agency, the factual information will also be exempt. Id. at 262 (citing Mead Data Central, 566 F.2d at 256; Mapother v. Dep't of Justice, 3 F.3d 1533, 1539 (D.C.Cir.1993); Petroleum Info. Corp., 976 F.2d at 1437-38); Wilderness Society, 344 F.Supp.2d at 14. In the latter instance, the agency must provide the required justification for not releasing segregable factual information as outlined in Part 2 above.

In addition, the Court of Appeals for the District of Columbia has repeatedly emphasized that an agency will not satisfy its burden of establishing its right to withhold records with a conclusory assertion of privilege. Id. (citing Senate of Puerto Rico, 823 F.2d at 585 (quoting Coastal States, 617 F.2d at 861)). Rather, "[t]he agency must identify the role of a contested document in a specific deliberative process, Coastal States, 617 F.2d at 868, in order to 'show by specific and detailed proof that disclosure would defeat, rather than further, the purposes of the FOIA.'" Judicial Watch, 297 F.Supp.2d at 259 (quoting Mead Data Central, 566 F.2d at 258) (other citations omitted). Moreover, "[s]ince the applicability of the deliberative process privilege depends on the content of each document and the role it plays in the decision-making process, an agency's affidavit must correlate facts in or about each withheld document with the elements of the privilege." Id. at 259-60 (citing Senate of Puerto Rico, 823 F.2d at 585; Coastal States, 617 F.2d at 866; Mead Data Central, 566 F.2d at 251); see also Wilderness Society, 344 F.Supp.2d at 14 (to qualify redacted and withheld documents as exempt under the deliberative process privilege, the agency must "identify the 'function and significance ... in the agency's decision making process'" of these documents (citing Arthur Andersen, 679 F.2d at 258)). "Without a sufficiently specific affidavit or Vaughn Index, a court cannot decide, one way or the

other, a deliberative process privilege claim." Id. at 260 (citing Senate of Puerto Rico, 823 F.2d at 585) (other citation omitted).

In the case at bar, neither the Vaughn indices nor the declarations of Leonard and Stern provide sufficient detail to enable this Court to decide HHS's claim of deliberative process privilege. Although the explanations for many of the withheld pages state that the documents make recommendations or express opinions regarding legal or policy matters, the Vaughn indices and declarations fail to provide any details regarding the give-and-take and/or supervisor/employee relationship between the author and recipient(s) in all but a few entries. Moreover, none of the explanations identify the specific agency decision or policy to which a particular document contributed, or state what role the document played in the deliberative process. For example, the entry for Bate-stamp page no. 520 identifies a specific review-Pennsylvania's Title IV-E foster care program for federal fiscal years 1998, 1999 and 2000-but neglects to identify the agency decision to which the document contributes and/or the role the document played in the decision. As another example, most entries describe the subject matter of the documents as relating to either a Pennsylvania Title IV-E program, an audit of that program, or a proposed settlement agreement. Not only does this description fail to identify the particular audit or program under consideration, it fails to identify the specific agency decision and the date thereof to which the particular document contributed and the way it contributed. Certainly, more than one audit has been conducted or contemplated by HHS and/or OIG with regard to Pennsylvania since 1997, yet no distinction is made as to which audit a particular document is referring. At the very least, HHS must identify the specific audit and/or program discussed in each withheld document, the particular agency decision to which the document contributed, and how the document contributed to it.

\*27 Nor does HHS correlate any facts about the withheld material with the elements of the privilege. Rather, the explanation merely reiterates the required elements of the deliberative process privilege. For many of the entries, the author and/or recipient(s) are unknown, so that a particular individual cannot be

linked to a document. In this situation, “ ‘it becomes difficult if not impossible, to perceive how the disclosure of such documents would result in a chilling effect upon the open and frank exchange of opinions within the agency.’ ” Wilderness Society, 344 F.Supp.2d at 15 (quoting Ethyl Corp. v. U.S. E.P.A., 25 F.3d 1241, 1250 (4th Cir.1994)). At the very least, HHS should provide information regarding the source of the documents' origination or the location where these documents were found, in order for the Court to assess what role, if any, a document played in the decision-making process.

In a few cases, where the document is described as a “draft,” (see e.g., Bate-stamp page nos. 513-16), HHS states that the documents do not represent the final agency decision. But the documents still do not fall within the deliberative process privilege because they fail to articulate with the required detail any particular agency decision or correlate the facts with the elements of the privilege.

In order for HHS to prove it is entitled to withhold 196 pages of materials under the deliberative process privilege, it must show that each document is both predecisional and deliberative. However, on the current record, the Court cannot make a determination whether any of the entries challenged by the Commonwealth satisfy this test.

Accordingly, because HHS's *Vaughn* indices and declarations fail to provide sufficient detail to show that either the attorney-client privilege, attorney work-product privilege, or the deliberative process privilege applies to the withheld materials, the Court recommends that Defendants' motion for summary judgment on this issue be denied.

#### 4. Policy Considerations

Finally, HHS argues that policy considerations also support granting summary judgment in its favor. In this regard, HHS accuses the Commonwealth of instituting the instant FOIA case with the sole purpose of conducting discovery in Civil Action No. 05-1345 (W.D.Pa.), thereby intentionally sidestepping the federal rules of discovery and this Court's instruction that discovery in Civil Action No. 05-1345 be stayed

until the dispositive motions were resolved. See Reply Mem. in Supp. of Defs.' Mot. for Summ. J. & Opp'n to Pl.'s Rule 56(f) Mot. at 13. Such a tactic, according to HHS, is squarely against the spirit and purpose of FOIA, as explained by numerous courts, including the Supreme Court and Court of Appeals for the Third Circuit.<sup>FN43</sup> HHS argues that essentially, these cases hold that FOIA was not intended to be a private discovery tool or to replace or supplement the discovery of litigants, but rather, is a public disclosure statute, fundamentally designed to inform the public about agency action, and not to benefit private litigants. Despite the express purpose of FOIA, HHS submits that counsel for the Commonwealth “has converted FOIA into his own personal discovery tool in an effort to avoid and/or supplement the Federal Rules of Civil Procedure.” (*Id.* at 14.) HHS further argues that if every plaintiff in a civil action against the United States filed a corresponding FOIA case in order to sidestep the federal rules of discovery, the drain of resources on the government and the Court system would be immeasurable. HHS posits that the Commonwealth should not be permitted to continue misusing and abusing the FOIA.

<sup>FN43</sup> NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978) (“The basic purpose of FOIA is to ensure an informed citizenry ... FOIA was *not* intended to be a private discovery tool”; Metex Corp. v. ACS Ind., Inc., 748 F.2d 150, 155 (3d Cir.1984) (rejecting requester's argument that information requested is necessary to resolve underlying civil litigation as FOIA is public disclosure statute and not intended to replace or supplement discovery of private litigants); Newry Ltd. v. U.S. Customs & Border Prot. Bureau, No. Civ. A. 04-02110 HHK, 2005 WL 3273975, at \*4 (D.D.C. July 29, 2005) (FOIA requesters' position as an entity whose merchandise was seized and the subject of administrative forfeiture proceeding had no bearing on its “right” to documents in question); Changzhou Laosan Group v. U.S. Customs & Border Prot. Bureau, No. Civ. A. 04-1919(ESH), 2005 WL 913268,



\*7 (D.D.C. Apr. 20, 2005) (identity of FOIA requester and his reasons for request have no bearing on entitlement); NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 144, 95 S.Ct. 1504, 44 L.Ed.2d 29 (1975) (FOIA is “fundamentally designed to inform public about agency action and not to benefit private litigants.”); Renegotiation Bd. v. Bannerkraft Clothing Co., Inc., 415 U.S. 124, 94 S.Ct. 1028, 39 L.Ed.2d 123 (1974) (“Discovery for litigation purposes is not an expressly indicated purpose of [FOIA]”); Johnson v. Dep’t of Justice, 785 F.Supp. 2, 4 (D.D.C.1991) (FOIA “is not a discovery statute”).

**\*28** The Commonwealth disputes this accusation, and submits that HHS’s own practice manual provides that litigants are permitted to use FOIA during the pendency of litigation against the agency. See *HHS Departmental Appeals Board Appellate Division-Practice Manual FAQ*, which is posted on the internet at [http://www.hhs.gov/dab/appellate/manual.html# 25](http://www.hhs.gov/dab/appellate/manual.html#25). Specifically, the Commonwealth points to the following frequently asked question and the agency’s response thereto:

What is the relationship between discovery processes at the DAB and requests under the Freedom of Information Act (FOIA)? An appellant has a right to seek information from the Department under FOIA which is unaffected by the existence or use of DAB processes. FOIA and DAB processes sometimes intersect, as when an appellant has a pending FOIA request which the appellant anticipates will produce information to be used in DAB proceedings. To avoid delay and misunderstanding about the rights and obligations of the parties under the two separate processes, appellants are urged to ask the DAB to convene a telephone conference when a FOIA request related to the case is involved.

*Id.* The Commonwealth further submits that this FOIA case was filed in contemplation of DAB litigation as permitted by the above policy, and indeed, the Court notes that DAB litigation is more likely now that the district court has dismissed the Commonwealth’s civil action filed at docket no. 05-1345, as

unripe. Moreover, the Commonwealth posits that resort to FOIA is necessary due to the DAB’s restrictive policies on discovery. *Id.* Therefore, the Commonwealth asserts that it routinely files FOIA litigation early into any audit that is likely to be contested due to the lag time between presenting the FOIA request and receiving responsive documents, and that such practice is expressly permitted by HHS as indicated in its DAB practice manual.

As to the cases cited by HHS for the proposition that FOIA was not intended to be a private discovery tool, the Commonwealth acknowledges that FOIA was not designed to supplement the rules of civil discovery. The Commonwealth argues, nonetheless, that it is well established that a requester’s rights are not diminished because of its status as a litigant, citing NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 n. 23, 98 S.Ct. 2311, 57 L.Ed.2d 159 (1978) (stating that a person’s rights under FOIA are neither diminished nor enhanced by his “litigation-generated need” for agency documents), and State of Maine v. U.S. Dep’t of the Interior, 298 F.3d 60, 66 (1st Cir.2002). The Commonwealth further submits that the reasons that a person makes a request under FOIA are “simply not relevant to the merits of a FOIA request”, Solar Sources, Inc. v. United States, 142 F.3d 1033, 1039 n. 6 (7th Cir.1998), and that a plaintiff’s rights in a FOIA case “do not depend on his or her identity”, North v. Walsh, 881 F.2d 1088, 1096 (D.C.Cir.1989). Thus, the Commonwealth contends it has a right to have its FOIA litigation decided independently of what happens in the case filed at docket no. 05-1345.

**\*29** The Court finds HHS’s policy argument unpersuasive. The Court does not read the cases cited by HHS as authority for preventing a party to an administrative proceeding or a lawsuit from submitting a FOIA request for information that relates to the subject matter of those proceedings, nor does this authority prevent the agency from processing and responding to such a FOIA request. Rather, the cases cited by HHS support the proposition that a FOIA requester does not have a *right* to receive and examine documents just because the information may have some special significance to the requester but not to the public at large. Moreover, this authority does not sug-

gest that a plaintiff may not use FOIA to request information needed for an underlying civil case, nor does it suggest in any way that what the Commonwealth is doing here is an abuse or misuse of FOIA. As the district court observed in *Inter Ocean Free Zone, Inc. v. U.S. Customs Serv.*, “[t]he identity of the FOIA requester and the requester’s reasons for making the request have no bearing upon its entitlement to the information.... what is given to one requester is what is available to all who make the same request.” 982 F.Supp. 867, 871 (S.D.Fla.1997) (citing *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989)). That is all the Commonwealth can and is asking for here. “[FOIA’s] sole concern is with what must be made public or not made public.” *Reporters Comm.*, 489 U.S. at 772 (quoting Davis, *The Information Act: A Preliminary Analysis*, 34 U.Chi.L.Rev. 761, 765 (1966-67)) (other citation omitted). Thus, to the extent the Commonwealth’s FOIA request seeks information that must be made available to the public, the Commonwealth has not abused or misused FOIA. For HHS to argue otherwise is disingenuous, especially in light of its own policy in the DAB practice manual. Indeed, HHS actually released approximately 925 pages of materials relating to the Pennsylvania’s Title IV-E programs, some of which are at issue in Civil Action No. 05-1345, in response to the Commonwealth’s FOIA requests in this case, which suggests, at the very least, that such “tactics” are permissible and not abusive.

Of course, Congress has built a safeguard into FOIA to protect agencies from having to disclose information that would contravene national security, privacy interests, law enforcement investigations, the attorney-client or work-product privileges, and deliberative process privilege, by enacting exemptions to FOIA’s disclosure requirements. These exemptions ensure that FOIA requester, who also happens to be a private litigant, does not obtain information that is not discoverable in a lawsuit.

Therefore, it cannot be said that the Commonwealth is abusing or misusing FOIA to obtain non-discoverable documents since these documents would be exempt under either the attorney-client, attorney

work-product or deliberative process privileges, so long as sufficiently detailed affidavits and *Vaughn* indices have been provided by the agency to justify their non-disclosure. However, in this case, HHS has failed to meet its burden and would have this Court hold the Commonwealth responsible. That the Court will not do. Accordingly, the Court finds no merit to HHS’s argument that policy considerations also support the granting of its motion for summary judgment.

#### 5. Appropriate Relief & Commonwealth’s Rule 56(f) Motion

\*30 The Court has found that HHS’s *Vaughn* indices and declarations are so deficient with regard to its segregability analysis and proving its entitlement to withholding materials or portions of materials pursuant to Exemption (b)(5) that the Court is unable to make a *de novo* determination on these issues, and similarly, the Commonwealth is unable to articulate its challenges. In this instance, the Court has several options in fashioning the appropriate relief, including inspecting the withheld materials *in camera*, allowing the plaintiff to conduct discovery, and requesting further affidavits and/or an amended *Vaughn* index from the agency. See *Judicial Watch*, 297 F.Supp.2d at 270 (citing *Spirko v. U.S. Postal Serv.*, 147 F.3d 992, 997 (D.C.Cir.1998)). The Court will review each of these options in turn.

One option is to order an *in camera* review of the withheld materials, and in fact, HHS has indicated that it is not opposed to such review in the event that the Court concludes HHS is not entitled to summary judgment as to HHS’s claims of exemption.<sup>FN44</sup> The Court has broad discretion in determining whether an *in camera* review should be conducted in a particular case. *Spirko*, 147 F.3d at 997. “The ultimate criterion is simply this: Whether the district judge believes that *in camera* inspection is needed in order to make a responsible *de novo* determination on the claims of exemption.” *Id.* at 996 (quoting *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C.Cir.1978)). Two factors here counsel against *in camera* review. First, conducting an *in camera* review is generally disfavored and appropriate “only when the issue ... could not be otherwise resolved.” *NLRB v. Robbins*

Tire & Rubber Co., 437 U.S. at 224. As explained below, the Court believes the best way to resolve the deficiencies here is through limited discovery. The second factor is the relatively large number of pages at issue. For some of the withheld materials, HHS is in the best position to provide the necessary factual information to prove the claimed exemptions, especially where the required details may not appear in the documents themselves, such as facts demonstrating documents were prepared in anticipation of litigation, or identifying the agency decision to which a particular document contributed. Conducting an *in camera* review of close to 200 pages of unreleased materials to determine whether the withheld materials are exempt under one of the claimed privileges would place a substantial burden on judicial resources, and is especially not warranted here in light of HHS's failure to supply the Court and the Commonwealth with even the minimal information necessary to make a *de novo* review and challenge the bases for withholding the materials, respectively. Another factor militating against *in camera* review is the general disfavor of *in camera* review by the courts as the principal means for resolving segregability disputes, as it impedes the adversarial position of the requester and is inconsistent with FOIA.<sup>FN45</sup> Accordingly, the Court declines to order an *in camera* review at this time.

FN44. See Reply Mem. in Supp. of Defs.' Mot. for Summ. J. & Opp'n to Pl.'s Rule 56(f) Motion (Doc. No. 17) at 2-3, 12.

FN45. Although *in camera* review has been required where the agency response is "vague; its claims too sweeping, or there is a reason to suspect bad faith," Mead Data Central, 566 F.2d at 262 (citing Weissman, 565 F.2d at 697-98)), these factors do not outweigh the more laudable factors of advancing the purposes of FOIA and conserving judicial resources under the particular facts of this case.

\*31 The second option the Court may select is allowing the plaintiff to conduct discovery. In the instant matter, the Commonwealth has indeed filed a Rule 56(f) motion requesting discovery in response to the Defendants' motion for summary judgment.<sup>FN46</sup>

Specifically, the Commonwealth requests that it be allowed to inquire as to (1) how HHS went about identifying segregable factual material, and (2) with regard to the claimed privileges, whether the withheld materials meet the requirements for withholding, including (i) the role of particular documents in the deliberative process, and (ii) whether attorney-client privilege documents have been kept confidential.<sup>FN47</sup> In addition, although not raised directly in its Rule 56(f) motion, the Commonwealth challenges the assertion of the attorney work-product privilege on the basis that HHS has not met its burden of proof of establishing that the documents were prepared in anticipation of litigation, and therefore, by implication, suggests discovery is needed on this issue as well.

FN46. Fed.R.Civ.P. 56(f) provides: "Should it appear from the affidavits of a party opposing the motion [for summary judgment] that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

FN47. See Pl.'s Br. in Opp'n to HHS' Mot. for Summ. J. & in Supp. of its Rule 56(f) Mot. (Doc. No. 15) at 20. The Commonwealth also requested discovery with regard to the adequacy of the search and suggests that at the conclusion of discovery, the parties be allowed to file cross motions for summary judgment. Given the Court's ruling on the adequacy of the search, *supra*, the Court recommends that the Commonwealth's Rule 56(f) motion be denied as to that issue.

In support of its Rule 56(f) motion, the Commonwealth submits the declaration of Jason Manne, counsel for the Pennsylvania Department of Public Welfare dated June 2, 2006 ("Manne Decl."). (Doc. No. 14.) In his declaration, Manne states that based on his prior experience, which spans twenty-five years

of handling Federal-State grant litigation including 12 FOIA lawsuits, he has a reasonable belief that HHS may not have released all segregable factual information in exempt documents and may be claiming exemptions improperly, as the official making the determination has historically lacked the program-specific knowledge necessary to make that determination. Manne specifically points to Bate-stamp page no. 545 as evidence of HHS's failure to release all segregable factual information. (Manne Decl. at ¶¶ 1, 5-6.) Manne further states that without knowing precisely how the decision to withhold information was made, he cannot adequately respond to the issue of segregability in HHS's motion for summary judgment. (*Id.* at 5.) In addition, Manne asserts that he cannot adequately respond to HHS's claimed exemptions without additional information regarding each document and how the document relates to the claimed privilege, as more fully explained in the Commonwealth's brief. (*Id.* at 6.)

HHS opposes the Commonwealth's Rule 56(f) motion, and in support thereof, advances two arguments. First, HHS submits that where the court already has sufficient information, consisting of *Vaughn* indices and declarations, to conclude the agency has fully complied with FOIA, discovery is generally unavailable. This argument is flawed however, because HHS assumes, incorrectly, that Court will find its *Vaughn* indices and declarations to be sufficiently detailed. As explained above, that is not the present case. Nonetheless, HHS cites a number of cases in which courts have denied discovery requests in FOIA cases.<sup>FN48</sup> However, the Court finds none of these cases dispositive here as the agencies in those cases submitted sufficiently detailed affidavits and/or there was no evidence of bad faith on the part of the agency, thereby making discovery unnecessary, unlike HHS in the case at bar.

<sup>FN48</sup>. The cases cited by HHS include *Wheeler v. CIA*, 271 F.Supp.2d 132, 139 (D.D.C.2003) (no evidence of bad faith); *SaifeCard*, 926 F.2d at 1200-02 (affidavits sufficiently detailed and no evidence of bad faith); *Simmons v. U.S. Dep't of Justice*, 796 F.2d 709, 711-12 (4th Cir.1986) (affidavits sufficiently detailed); *Broadrick v. Execut-*

*ive Office of President*, 139 F.Supp.2d 55, 64 (D.D.C.2001) (affidavits sufficiently detailed and no evidence of bad faith).

\*32 Second, HHS submits that there is no need here to conduct an *in camera* review, but if the Court is dissatisfied with the information supplied, it has the discretion to order a more specific index or order an *in camera* review. According to HHS, given the number and similarity of the documents at issue, an *in camera* inspection would (1) show that the documents were appropriately withheld, (2) would completely eliminate the need for discovery on the FOIA exemptions, and (3) allow the Court to make its own segregability determination. By so arguing, however, HHS attempts to improperly shift its burden of proof to this Court. As stated earlier, the Court finds an *in camera* review would substantially burden judicial resources.

Clearly, there is precedent for allowing limited discovery in FOIA cases where the affidavits and/or *Vaughn* index are deficient and national security is not involved. *See, e.g., Commw. of PA Dep't of Public Welfare v. United States, U.S. Dep't of Health & Human Serv.*, Civ. A. No. 99-175, 1999 U.S. Dist. LEXIS 17978, \*7-8 (W.D.Pa. Oct. 12, 1999) (citing *Church of Scientology v. IRS*, 991 F.2d 560, 563 (9th Cir.1993), vacated in part on other grounds, 30 F.3d 101 (9th Cir.1994); *Benavides v. DEA*, 968 F.2d 1243, 1249-50 (D.C.Cir.), mod. on other grounds, 976 F.2d 751 (D.C.Cir.1992)); *see also Schiller v. I.N.S.*, 205 F.Supp.2d 648, 653 (W.D.Tex.2002) (noting numerous district court cases holding that discovery in FOIA cases is limited to determining whether withheld items are exempt from disclosure or whether a thorough search for documents has been made). Because a FOIA plaintiff "obviously cannot know the facts [it] does not know," without discovery, it is virtually impossible for a FOIA plaintiff to know whether the agency has complied with FOIA's mandate. *Id.* at \*8 (quoting *Hanover Potato Prods. Inc. v. Shalala*, 989 F.2d 123, 129 (3d Cir.1993)). As the Court of Appeals for this Circuit observed in *Davin, supra*: "The review of FOIA cases is made difficult by the fact that the party seeking disclosure does not know the contents of the information sought and is, therefore, helpless to contradict the govern-

ment's description of the information or effectively assist the trial judge." *Id.* (quoting *Davin*, 60 F.3d at 1049). In *Commw. v. HHS* filed at Civil Action No. 99-175, Judge Smith found that the agency's affidavit on the adequacy of the search was scant and ordered limited discovery regarding the completeness of the material produced as well as the methodology used to compile it. *Id.* (citing *Weisberg v. U.S. Dep't of Justice*, 627 F.2d 365, 371 (D.C.Cir.1980)).

The decision whether to allow discovery lies within the discretion of this Court. *Schiller*, 205 F.Supp.2d at 653 (citing *Rugiero v. U.S. Dep't of Justice*, 257 F.3d 534, 544 (6th Cir.2001)) (other citations omitted). The courts have uniformly held that discovery in a FOIA case is permitted "when factual issues arise about the 'adequacy or completeness of the government search and index' and this issue can arise 'only after the government files its affidavits and supporting memorandum of law' ". *Id.* (quoting *Murphy v. F.B.I.*, 490 F.Supp. 1134, 1137 (D.D.C.1980)). Therefore, given that the discovery the Commonwealth seeks to conduct is limited to the issue of the completeness of HHS's *Vaughn* indices and declarations as to segregability of non-exempt factual information and the claimed exemptions for withholding materials, and that HHS has already filed its *Vaughn* indices and supporting declarations, the Court finds that limited discovery is appropriate here.

\*33 In lieu of discovery and an *in camera* review, the Court may order the agency to provide supplemental declarations or an amended *Vaughn* index to correct the deficiencies. In light of the fact that HHS has already had two opportunities to provide sufficiently detailed affidavits and has failed both times, the Court finds the better approach is to allow the Commonwealth to conduct limited discovery as outlined above.

Accordingly, the Court recommends that the Commonwealth's Rule 56(f) motion be granted and limited discovery allowed with regard to the completeness of the *Vaughn* indices and declarations on the segregability of non-exempt factual information and the claimed exemptions for the withheld materials. At the conclusion of discovery, if HHS still wishes to withhold materials or portions of materials, it will be

allowed to renew its motion for summary judgment, and the Commonwealth will be permitted to file a cross-motion for summary judgment.

### III. CONCLUSION

While the claimed privileges for a number of the documents appear plausible on the surface, HHS has failed to provide sufficiently detailed declarations and *Vaughn* indices to show that it has met *all* of the criteria for the respective privileges. Ultimately, the Court may well find that the withheld materials are exempt under either the attorney-client privilege, attorney work-product privilege, or the deliberative process privilege. However, on the current record, the Court cannot determine whether any of the claimed privileges apply as the declarations and *Vaughn* indices fail to provide the required detail.

Therefore, for this reason and the reasons set forth above, it is recommended that Defendants' Motion for Summary Judgment (Doc. No. 8) be granted with regard to the issue of the adequacy of the search, and denied without prejudice in all other respects. It is further recommended that Plaintiff's Rule 56(f) Motion (Doc. No. 13) be denied with prejudice on the issue of the adequacy of the search, and granted on the remaining issues.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, the parties are allowed ten (10) days from the date of service to file objections to this report and recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

W.D.Pa., 2006.  
Pennsylvania Dept. of Public Welfare v. U.S.  
Slip Copy, 2006 WL 3792628 (W.D.Pa.)

END OF DOCUMENT

6 of 100 DOCUMENTS



Caution

As of: Apr 05, 2007

**LOUISE SAWYER, Plaintiff, v. SOUTHWEST AIRLINES, Defendant. GRACE FULLER, Plaintiff, v. SOUTHWEST AIRLINES, Defendant.**

**CIVIL ACTION No. 01-2385-KHV, CIVIL ACTION No. 01-2386-KHV**

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS**

*2002 U.S. Dist. LEXIS 25111*

**December 23, 2002, Decided**

**DISPOSITION:** [\*1] Plaintiffs' Motion to Compel Production of Documents denied in part.

compel except as to six documents, which the Court will inspect *in camera* to determine whether they are protected by work product [\*2] immunity.

**COUNSEL:** For LOUISE SAWYER, plaintiff: Scott A. Wissel, Lewis, Rice & Fingersh, L.C., Kansas City, MO.

**I. Factual Background**

For SOUTHWEST AIRLINES, defendant: John W. Cowden, Mary C. O'Connell, Baker, Sterchi, Cowden & Rice, L.L.C., Kansas City, MO. Todd W. Amrein, Phoenix, AZ.

In these two consolidated cases, Plaintiffs assert civil rights claims pursuant to 42 U.S.C. § 1981. In addition, Plaintiff Fuller alleges claims for intentional and negligent infliction of emotional distress, while Plaintiff Sawyer alleges only a claim for intentional infliction of emotional distress.

**JUDGES:** David J. Waxse, United States Magistrate Judge.

Global Aerospace ("Global") is Southwest's insurer and has a duty to defend Southwest with respect to the claims asserted in these consolidated cases. n1 At issue in this motion to compel are documents that were exchanged between Southwest and Global in connection with this action.

**OPINION BY:** David J. Waxse

**OPINION:**

n1 Ida Loubier Aff, Ex. 1 attached to doc. 73.

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiffs' Motion to Compel Production of Documents (doc. 72). Plaintiffs ask the Court to overrule Defendant Southwest Airlines' ("Southwest") objections to Plaintiff Grace Fuller's First Request for Production of Documents that are based on the assertion of attorney-client privilege and work product protection and to compel production of the alleged privileged and protected documents. For the reasons set forth below, the Court will deny the motion to

In its August 17, 2002 responses to the requests for production, Southwest objected to producing any documents that were protected by the attorney-client privilege and work product doctrine. Southwest also objected to producing certain documents that it contended were protected from disclosure by the insurer/insured

027605

privilege. [\*3] Southwest did not provide a privilege log until September 23, 2002. On October 4, 2002 Southwest served a consolidated privilege log, and Plaintiffs filed the instant motion to compel on October 17, 2002. Southwest responded to the motion to compel and provided an amended version of the privilege log ("Amended Privilege Log") on October 28, 2002.

In its response to the motion to compel, Southwest states that it has abandoned its assertion of the insurer/insured privilege and has provided to Plaintiffs the documents it withheld based on that privilege. Thus, those objections and documents are no longer at issue. The objections at issue are only those based upon the attorney-client privilege and work product doctrine.

## II. Analysis

### A. Did Southwest Waive the Right to Assert Attorney-Client Privilege and Work Product Protection by Failing to Timely Serve a Privilege Log?

Plaintiffs first argue that the motion to compel should be granted because Southwest waited more than two months after it served its initial responses to the requests for production to provide a meaningful privilege log. The Court will decline to find waiver. The Court will therefore proceed to analyze [\*4] the merits of Southwest's privilege and work product objections and determine whether the Amended Privilege Log is sufficient to satisfy Southwest's obligations.

#### B. Attorney-Client Privilege

##### 1. Applicable law

Whether the court applies federal or Kansas law generally makes no difference in determining whether the attorney-client privilege applies. n2 This is because the essential elements of the attorney-client privilege are nearly identical under both Kansas and federal law. n3 Moreover, "the Kansas statute concerning the attorney-client privilege and its exceptions is typical of the laws of other jurisdictions." n4

n2 *Simmons Foods, Inc. v. Willis*, 191 F.R.D. 625, (D. Kan. 2000) (citations omitted).

n3 *Marten v. Yellow Freight Sys., Inc.*, 1998 U.S. Dist. LEXIS 268, No. 96-2013- GTV, 1998 WL 13244, at \*7 (D. Kan. Jan. 6 1998).

n4 *In re A.H. Robins Co.*, 107 F.R.D. 2, 8 (D. Kan. 1985) (citation omitted).

Under Kansas law, the essential elements of the privilege are: [\*5]

(1) Where legal advice is sought (2) from a professional legal advisor in his capacity as such, (3) the communications made in the course of that relationship (4) made in confidence (5) by the client (6) are permanently protected (7) from disclosures by the client, the legal advisor, or any other witness (8) unless the privilege is waived. n5

n5 *State v. Maxwell*, 10 Kan. App. 2d 62, 63, 691 P.2d 1316 (1984) (citation omitted).

Similarly, the essential elements of the privilege under federal common law are:

(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived. n6

n6 *Great Plains Mut. Ins. Co.*, 150 F.R.D. 193, 196 n.4 (D. Kan. 1993).

[\*6]

Under both Kansas and federal law, the attorney-client privilege protects confidential communications made by a client to an attorney in order to obtain legal assistance from the attorney in his or her capacity as a legal advisor. n7 Under both laws, the term "communications" includes advice given by the attorney in the course of representing the client. n8 It also includes disclosures by the client to the attorney's representative or employee incidental to the professional relationship. n9

n7 *Simmons Foods*, 191 F.R.D. at 632; *Marten*, 1998 U.S. Dist. LEXIS 268, 1998 WL 13244, at \*6.

n8 *Simmons Foods*, 191 F.R.D. at 632; *Marten*, 1998 U.S. Dist. LEXIS 268, 1998 WL 13244, at \*6. See also *K.S.A. 60-426(c)(2)*.

n9 *Simmons Foods*, 191 F.R.D. at 632; *Marten*, 1998 U.S. Dist. LEXIS 268, 1998 WL 13244, at \*6. See also *K.S.A. 60-426(c)(2)*.

2. *Is the attorney-client privilege applicable here and has it been waived?*

Plaintiffs assert that Southwest has waived any attorney-client privilege existing [\*7] between Southwest and its attorney John Cowden by disclosing the documents to Global. Southwest responds that Global is also a client of Southwest's attorney John Cowden, and, thus, an attorney-client relationship also exists between Global and Cowden. Southwest further asserts that a claims attorney for Global requested legal advice and consultation from Cowden and that he provided that legal advice and consultation through written communications that are the subject of the motion to compel. In reply, Plaintiffs argue that the mere fact that Global is also a client of Cowden's does not save the privilege or protection. They argue that regardless of the attorney-client relationship between Global and Cowden, Global is still a third-party to any communications between Southwest and Cowden, and thus, when the communications between Cowden and Southwest were disclosed to Global, the privilege was waived. Plaintiffs claim that the proper objection in such a situation would have been for Southwest to assert objections based on either the joint defense doctrine or the common interest doctrine. Plaintiffs argue that because Southwest has never asserted either of these objections, any privilege [\*8] existing under those doctrines has been waived.

The Court disagrees, and, for the reasons discussed below, finds the common interest doctrine to be applicable here. Although Southwest has not expressly asserted the doctrine by name, Southwest has established all of the necessary elements of the doctrine.

3. *The common interest doctrine*

Generally, when a communication between a client

and an attorney occurs in the presence of third parties, the attorney-client privilege is waived. n10 The common interest doctrine, however, affords two parties with a common legal interest a safe harbor in which they can openly share privileged information without risking the wider dissemination of that information. n11 The common interest doctrine can only exist where there is an applicable underlying privilege, such as the attorney-client privilege or the work-product doctrine. n12

n10 *Lewis v. UNUM Corp. Severance Plan*, 203 F.R.D. 615, 620 (D. Kan. 2001).

n11 *Johnson Matthey, Inc. v. Research Corp.*, 2002 U.S. Dist. LEXIS 13560, No. 01 CIV.8115MBMFM, 2002 WL 1728566, at \*6 (S.D. N.Y. July 24, 2002)

[\*9]

n12 *Cavallaro v. U.S.*, 284 F.3d 236, 240 (1st Cir. 2002); *In re Megan-Racine*, 189 Bankr. 562, 571.

Admittedly, there is no Kansas statute or case that recognizes the common interest doctrine as a distinct privilege. n13 The Court, however, does not find that to be fatal to the assertion of the doctrine. Most commentators and courts view it not as a separate privilege, but as an exception to waiver of the attorney-client privilege. n14 The common interest doctrine thus acts as an exception to the general waiver rule by facilitating cooperative efforts among parties who share common interests. n15

n13 *In State v. Maxwell*, 10 Kan.App.2d 62, 691 P.2d 1316 (1984), the Kansas Court of Appeals addressed a similar doctrine relating to an attorney's joint defense of two or more clients. The Court finds that doctrine inapplicable here, however, as Global is not a co-defendant of Southwest in this litigation.

n14 See, e.g., *U.S. Info. Sys., Inc. v. Int'l Broth. of Elec. Workers Local Union No. 3*, 2002 U.S. Dist. LEXIS 19363, No. 00 CIV.4763RMBJCF, 2002 WL 31296430, at \*3



(S.D. N.Y., Oct. 11, 2002) ("the joint defense privilege or common interest rule is not really a separate privilege. Rather, it is a limited exception to the general rule that the attorney-client privilege is waived when a protected communication is disclosed to a third party outside the attorney-client relationship.") (citation omitted); *Johnson Matthey, Inc. v. Research Corp.*, 2002 U.S. Dist. LEXIS 13560, No. 01 CIV.8115MBMFM, 2002 WL 1728566, at \*6 (S.D. N.Y. July 24, 2002) ("The common interest exception is not an independent privilege, but an extension of the attorney-client privilege which serves to protect the confidentiality of communications passing from one party to the attorney for another party where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel."); *Miller v. Alagna*, 138 F. Supp. 2d 1252, 1256 (C.D. Cal. 2000) (California law recognizes a "joint client" or "common interest" exception to the attorney-client privilege); *Roberts Aircraft Co. v. Kern*, No. 96- N-1214, 1997 WL 524894, at 3 (D. Colo. March 20, 1997) ("The 'common interest' doctrine is an exception to an otherwise applicable attorney-client privilege.").

[\*10]

n15 *In re Megan-Racine Assoc., Inc.*, 189 Bankr. 562, 571 (N.D. N.Y. 1995).

For the common interest doctrine to attach, "most courts . . . insist that the two parties have in common an interest in securing legal advice related to the same matter -- and that the communications be made to advance their shared interest in securing legal advice on that common matter." n16 "The key consideration is that the nature of the interest be identical, not similar, and be legal, not solely commercial." n17

n16 *First Pacific Networks, Inc. v. Atlantic Mut. Ins. Co.*, 163 F.R.D. 574, 581 (N.D. Cal. 1995) (citations omitted); *accord Strougo v. BEA Assoc.*, 199 F.R.D. 515, 525 (S.D. N.Y. 2001) (to invoke the "common interest" exception, a party must show that the communications were made in

the course of a joint defense effort or that the clients share a common legal interest, and that the statements were designed to further the common effort); *Libbey Glass, Inc. v. Oneida, Ltd.*, 197 F.R.D. 342, 348 (N.D. Ohio 1999) (parties must have a common legal, as opposed to commercial, interest and show that the communications are made in the course of formulating a common legal strategy).

[\*11]

n17 *Johnson Matthey*, 2002 U.S. Dist. LEXIS 13560, 2002 WL 1728566, at \*6 (citations omitted).

The Court finds that these elements have been satisfied here. Southwest has established that Southwest and Global, who has a duty to defend Southwest in this case, have an interest in common and that the interest of a legal and not commercial nature. Southwest has provided the affidavit of Ida Loubier, n18 a claims attorney for Global. Her affidavit establishes that, pursuant to Global's duty to defend Southwest, she retained Cowden as the attorney to defend Southwest in these consolidated cases and to provide legal advice in connection with all matters relating to the lawsuits. Her affidavit also establishes that, as a representative of Global, she requested and obtained legal advice from Cowden in connection with matters relating to the cases.

n18 See Ex. 1, attached to doc. 73.

In light of the above, the Court holds that Southwest has [\*12] established sufficient evidence to warrant application of the common interest exception to the waiver of any attorney-client privilege. Although Southwest did not use the term "common interest" doctrine or exception in asserting that the documents were privileged, it has shown that the necessary elements exist with respect to the claimed privileged documents. To fault Southwest for not using the correct terminology, when all of the elements have been satisfied, would elevate form over substance and would contravene the important policies underlying the attorney-client privilege. As the Kansas Supreme Court has emphasized, "the attorney-client privilege is important to the

administration of justice and should not be set aside lightly." n19

n19 *Wallace Saunders, Austin, Brown & Enochs, Chartered v. Louisburg Grain Co., Inc.*, 250 Kan. 54, 62, 824 P.2d. 933 (1992).

In sum, the Court holds that the common interest doctrine applies here and the documents exchanged between Southwest and Global retain [\*13] their attorney-client privileged status. Plaintiffs' motion to compel will therefore be denied with respect to the documents that Southwest has asserted are attorney-client privileged.

### B. Work Product Protection

The Court will now proceed to determine whether Southwest has properly asserted work product protection. Of the hundreds of documents listed in the Amended Privilege Log, only sixteen are identified solely as work product. n20 This analysis thus pertains to only those sixteen documents.

n20 Most of the documents identified in the Amended Privilege Log as work product are also identified as attorney-client privileged communications. Because the Court has upheld the assertion of the attorney-client privilege, the Court need not determine whether those documents are also protected by work product immunity.

1. *Are the documents protected by work product immunity?*

"Unlike the attorney client privilege, the work product privilege is governed, even in diversity cases, by a uniform federal standard [\*14] embodied in *Fed.R.Civ.P. 26(b)(3)*." n21 Thus, the Court will apply federal law to determine whether Southwest's assertion of work product protection should be upheld.

n21 *Frontier Refining, Inc. v. Gorman-Rupp Co., Inc.*, 136 F.3d 695, 702 (10th Cir. 1998) (citation omitted).

As the party asserting work product protection, Southwest has the burden of establishing that the work product doctrine applies. n22 To carry that burden, Southwest must make a "clear showing" that the asserted objection applies. n23 Southwest must show that "(1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party." n24

n22 *Disidore v. Mail Contractors of America, Inc.*, 196 F.R.D. 410, 413 (D. Kan. 2000) (citations omitted).

n23 *Id.* (citations omitted).

[\*15]

n24 *Johnson v. Gmeinder*, 191 F.R.D. 638, 643 (D. Kan. 2000) (citations omitted).

Applying these standards here, the Court finds that Southwest has established that all but the following documents are protected by work product immunity: PRIV 157, 158, 219, 245, 246, and 328. Southwest has failed to show that these six documents were prepared in anticipation of litigation or for trial. Southwest shall provide copies of those documents to the Court for an *in camera* inspection so that the Court may determine whether they are in fact protected by work product immunity. Southwest shall submit these documents to the Court within **seven (7) days** of the date of this Memorandum and Order.

2. *Are Plaintiffs entitled to review the work product documents regardless of their protected status?*

Plaintiffs assert that even if the Court finds that the documents are protected work product, Plaintiffs have a substantial need for these documents and that they should therefore be produced pursuant to *Fed.R.Civ.P. 26(b)(3)*. Under that rule, a party may discover work product "upon [\*16] a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means." n25

n25 *Fed.R.Civ.P 26(b)(3)*.

Plaintiffs have made no showing of "substantial need." The Court will therefore deny the motion to compel as it pertains to the documents that the Court has determined are protected by work product immunity.

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion to Compel Production of Documents (doc. 72) is denied in all respects except with respect to the six documents identified as PRIV 157, 158, 219, 245, 246, and 328 in Southwest's Amended Privilege Log. Within **seven (7) days** of the date of this Memorandum and

Order, Southwest shall provide copies of those documents to the Court for the Court's *in camera* inspection. The Court will defer ruling on the Motion to Compel as it pertains to those six documents until the Court has [\*17] reviewed said documents.

**IT IS SO ORDERED.**

Dated in Kansas City, Kansas on this 23rd day of December 2002.

David J. Waxse

United States Magistrate Judge

1 of 100 DOCUMENTS



Analysis  
As of: Apr 05, 2007

**SALLY BROESSEL, On Behalf of Herself and All Others Similarly Situated,  
PLAINTIFF vs. TRIAD GUARANTY INSURANCE CORPORATION,  
DEFENDANT**

**CIVIL ACTION NO. 1:04CV-00004-JHM**

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
KENTUCKY, BOWLING GREEN DIVISION**

*238 F.R.D. 215; 2006 U.S. Dist. LEXIS 93726*

**August 2, 2006, Decided**

**PRIOR HISTORY:** *Broessel v. Triad Guar. Ins. Corp., 2006 U.S. Dist. LEXIS 94192 (W.D. Ky., Aug. 1, 2006)*

**COUNSEL:** **[\*\*1]** For Sally Broessel, On Behalf of Herself and All Others Similarly Situated, Plaintiff: Dana E. Deering, LEAD ATTORNEY, Parry, Deering, Futscher & Sparks PSC, Covington, KY; Douglas Bowdoin, LEAD ATTORNEY, Douglas Bowdoin, PA, Orlando, FL; Tamra C. Givens, Terry A. Smiljanich, W. Christian Hoyer, LEAD ATTORNEYS, James, Hoyer, Newcomer & Smiljanich, PA, Tampa, FL.

For Triad Guaranty Insurance Corp., Defendant: Jennifer R. Vala, Lisa Wolgast, Nolan C. Leake, LEAD ATTORNEYS, King & Spalding, LLP, Atlanta, GA; Ronald G. Sheffer, LEAD ATTORNEY, Sheffer Law Firm, PLLC, Louisville, KY.

**JUDGES:** E. Robert Goebel, United States Magistrate Judge.

**OPINION BY:** E. Robert Goebel

**OPINION:**

**[\*217] ORDER**

Before the Court are Plaintiff's Motion to Compel (DN 103), Plaintiff's supplement (DN 116), Defendant's response (DN 120), Plaintiff's reply (DN 129), and Defendant's sur-reply (DN 142). At issue are documents that Defendant has withheld from production on claim of work-product protection, the attorney-client privilege, and/or the joint defense/common interest privilege. Pursuant to an earlier order (DN 132), Defendant submitted directly to the undersigned for *in camera* inspection all documents that it **[\*\*2]** has withheld from production on claim of privilege or work-product protection. For the reasons set forth below, Plaintiff's motion is granted in part and denied in part. **[\*218]**

A

Pursuant to *Rule 26(b)(1)*, discovery must be "relevant to the claim or defense of any party." *Fed.R.Civ.P. 26(b)(1)(2000 Amendment)*, Advisory Committee's Note, 2000 amendments; see *Phalp v. City of Overland Park, Kansas, 2002 U.S. Dist. LEXIS 9684, 2002 WL 1162449, \*3 fn.3 (D.Kan. 2002)*. The undersigned notes that four of the documents withheld by Defendant are joint defense agreements. See 007382-007392, 00751-007581, 008962-008966, 008967-008976. The parties have argued vigorously on the question of whether these documents are privileged. However, both seemed to have overlooked a precedent

issue. Specifically, are these documents relevant within the meaning of *Rule 26(b)(1)*? While these documents may be helpful to the Court in addressing this discovery dispute, they are not "relevant to the claim or defense of any party." *Fed.R.Civ.P. 26(b)(1)*. For this reason, the undersigned concludes the joint defense agreements are not discoverable. [\*\*3]

Defendant appears to concede that the remainder of the withheld documents are relevant (DN 120). For this reason the undersigned will turn to Defendant's claim or claims of privilege as to each document withheld from production. The parties agree that federal common law on privilege applies to this discovery dispute.

*Rule 26(b)(1) of the Federal Rules of Civil Procedure* mandates that privileged matters are afforded an absolute protection from discovery. This is distinguishable from the qualified protection from discovery that is afforded work-product. n1 *Fed.R.Civ.P. 26(b)(3)*; *In re Perrigo Company*, 128 F.3d 430, 437 (6th Cir. 1997) (citations omitted); *Toledo Edison Co.*, 847 F.2d 335, 338-341 (6th Cir. 1988).

n1 The protection afforded work-product is not a privilege as the term is used in the Rules of Civil Procedure or the Law of Evidence. *Hickman v. Taylor*, 329 U.S. 495, 509-510, 67 S. Ct. 385, 91 L. Ed. 451 & n. 9 (1947). If an adverse party demonstrates substantial need and an inability to obtain the equivalent without undue hardship then the Court may order such work-product be produced, provided it does not reveal an attorney's mental impressions and opinions. *In re Perrigo Company*, 128 F.3d 430, 437 (6th Cir. 1997) (citations omitted); *Toledo Edison Co.*, 847 F.2d 335, 338-341 (6th Cir. 1988).

[\*\*4]

B

Defendant has asserted only the attorney-client privilege as to documents 007283-07286, 007564, 007650-007651, 007654, 007662, 007665, 007671-007672, 007685, 007688-007689, 007690-007692, 007693, 007698-007699, 007759-007760, 007761, and 007806.

Case law often articulates the elements of the

attorney-client privilege as follows:

"(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection is waived."

*Reed v. Baxter*, 134 F.3d 351, 355-356 (6th Cir. 1998) (citations omitted). However, these elements apply to only a portion of the confidential communications that courts have deemed subject to the attorney-client privilege. For example, the privilege applies to confidential communications from counsel to client that set forth legal advice or reveal the substance of the client confidence. *United States v. Defazio*, 899 F.2d 626, 635 (7th Cir. 1990) (citations omitted); *Bank Brussels Lambert v. Credit Lyonnais*, 160 F.R.D. 437, 441-442 (S.D.N.Y. 1995) [\*\*5] (citations omitted). The attorney-client privilege also extends to communications made by noncontrol group employees (1) at the direction of their superiors, (2) in order to secure legal advice for the corporation, (3) about matters within the scope of the employee's corporate duties; and (4) while the employees were aware that they were being questioned in order that the corporation could obtain legal advice. *Upjohn Co. v. United States*, 449 U.S. 383, 394, 101 S. Ct. 677, 66 L. Ed. 2d 584 (1981). Additionally, confidential communications disclosed to or made in the presence of certain agents of the attorney (e.g., accountants, engineers, or experts) to further the rendition of legal advice or in connection with the legal representation are subject to the attorney-client [\*219] privilege. See e.g., *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989). Further, the privilege extends to communications among corporate employees that reflect legal advice rendered by counsel to the corporation. *In re Grand Jury 90-1,758 F.Supp. 1411, 1413 (D.Colo. 1991)* (President of the corporation conveyed in a letter to the Board of Directors legal advice he received from outside counsel); [\*\*6] *SCM Corp. V. Xerox Corp.*, -70 F.R.D. 508, 518 (D. Conn.) appeal dismissed, 534 F.2d 1031, 1032 (2d Cir. 1976) ("A privileged communication should not lose its protection if an executive relays legal advice to

another who shares responsibility for the subject matter underlying the consultation.").

The burden of establishing the existence of the attorney-client privilege rests with Defendant because it is asserting the privilege in response to Plaintiff's discovery requests. *U.S. v. Dakota*, 197 F.3d 821, 825 (6th Cir. 1999) (citing *In re Grand Jury Investigation No. 83-2-35*, 723 F.2d 447, 450 (6th Cir.1983)); see also *Ross v. City of Memphis*, 423 F.3d 596, 606 (6th Cir. 2005).

After considering the arguments of the parties and conducting a review of documents 007283-07286, 007564, 007650-007651, 007654, 007662, 007665, 007671-007672, 007685, 007688-007689, 007690-007692, 007693, 007698-007699, 007759-007760, 007761, and 007806, the undersigned concludes that Defendant has satisfied its burden of demonstrating that each communication or note summarizing a communication is subject to the attorney-client [\*\*7] privilege.

### C

Defendant has asserted the joint defense/common interest privilege as to the remainder of the documents it has withheld from production. n2

n2 In a few instances Defendant has also asserted the attorney-client privilege. See documents 007380-007381, 007559, 007560, 007652-007653, 007660-007661, 007663-007664, 007666-007667, 007673-007674, 007675-007676, 007679-007680, 007681-007682, 007683-007684, 007686-007687, 007694-007695, 007696-007697, 007700-007701, 007709-007714, and 007820. For the reasons set forth in this section, the assertion of both privileges is redundant.

"The common interest privilege is not an independent basis for privilege, but an exception to the general rule that the attorney-client privilege is waived when privileged information is disclosed to a third party." Edna Selan Epstein, *The Attorney-Client Privilege and the Work-Product Doctrine*, American Bar Association Section of Litigation at 196 (4th ed. 2001). For this reason, it "assumes the existence of a valid underlying

[\*\*8] privilege." *Id.* Additionally, it assumes "there is a valid basis for exchanging information with a third party without undermining the requirement of confidentiality for the attorney-client privilege to apply." *Id.* "In effect, it states that privileged communications shared among and within some group of people will be deemed to have been made in confidence." *Id.*

Essentially, there are three situations where this exception is deemed to apply. *Id.* at 200-206. The first being a single attorney representing multiple clients in the same matter. *Id.* at 200-201. The first situation does not apply to the circumstances herein.

Another situation where the common interest is deemed sufficient to preclude waiver is when parties share a common defense. *Id.* at 201. This joint defense concept developed in the "criminal context when multiple defendants, each having separate counsel, share information to effect a united defense." *Id.* More and more, to protect the joint defense privilege, parties enter into written joint defense agreements in an effort to assure that information shared among the attorneys for each of the defendants will remain privileged despite the sharing. [\*\*9] *Id.* Here, Defendant and the other six members of the mortgage insurance industry in the United States did just that in May 2003. All seven signatories to this agreement appreciated the need to pool their resources in preparing a common or united defense to the claims asserted in an alleged class action suit filed against one of its members, Mortgage Guaranty Insurance Corporation ("MGIC") (DN 120, Exhibit 1, Affidavit of Earl Wall; 007382-007392). Essentially, all seven members [\*220] recognized they may become co-defendants in that action or become defendants in an alleged class action raising the same claims (DN 120, Exhibit 1, Affidavit of Earl Wall; 007382-007392). While the seven members of the mortgage insurance industry did not become co-defendants in the same civil action, all but one are presently defending against the same claims asserted in six alleged class action lawsuits prosecuted by the same law firm.

The third and final situation where the common interest is deemed sufficient to preclude waiver is "when two or more clients share a common legal or commercial interest and, therefore, share legal advice with respect to that common interest." *Id.* at 203. "The common [\*\*10] interest doctrine encourages parties working with a common purpose to benefit from the guidance of counsel,

and thus avoid pitfalls that otherwise might impair their progress toward their shared objective." *Id.* The doctrine has evolved from *Duplan Corp. v. Deering Milliken*, 397 F.Supp. 1146 (D.S.C. 1974), "which was limited to a common shared legal, rather than a common shared financial or commercial, interest." Epstein, *supra*, at 203. Notably, "[u]nlike the joint defense privilege, the common interest does not require or imply that an actual suit is or ever will be pending." *Id.*

After considering the arguments of the parties as well as the affidavits of Earl F. Wall, General Counsel of Defendant, and Suzanne C. Hutchinson, Executive Vice-President of the Mortgage Insurance Companies of America ("MICA"), the undersigned concludes the third situation applies to the circumstances herein. True, the seven members of the mortgage insurance industry did enter into a joint defense agreement in May of 2003. However, as evidenced by many of the documents withheld and indicated in Mr. Wall's affidavit, these seven companies and the trade organization they created, [\*\*11] MICA, have clearly shared a "common legal interest" n3 that extends beyond pooling their resources to prepare a common or united defense to the claims asserted in an alleged class action suit. Defendant has satisfied its burden of demonstrating a "common legal interest" with the other six members in the industry and MICA that extends to legislative and regulatory matters, as well as in matters in litigation or which could lead to litigation. For this reason, the undersigned finds Defendant's assertion of the common interest privilege well-taken, including the communications made years before the filing of this action and made after Radian Guaranty, Inc. ("Radian") withdrew as a member of MICA in July of 2003. n4

n3 There are two lines of cases that reflect differing views regarding the common interest arrangement. *Id.*; *Libbey Glass, Inc. v. Oneida, LTD.*, 197 F.R.D. 342, 348 (N.D. Ohio 1999). The undersigned has applied the more restrictive standard which is expressed in *Bank Brussels Lambert v. Credit Lyonnais*, 160 F.R.D. 437, 447 (S.D.N.Y. 1995). Epstein, *supra*, at 203-204, 206; *Libbey Glass, Inc.*, 197 F.R.D. at 348. In *Bank Brussels Lambert* the Court concluded:

"The common interest doctrine, then, has both a theoretical and a

practical component. In theory, the parties among whom privileged matter is shared must have a common legal, as opposed to commercial, interest. In practice, they must have demonstrated cooperation in formulating a common legal strategy."

160 F.R.D. at 447. Notably, the common interest doctrine, "does not encompass a joint business strategy which happens to include as one of its elements a concern about litigation." *Id.*

[\*\*12]

n4 The undersigned concludes that Radian's business dispute with MICA on an unrelated matter does not prevent it from continuing to share this "common legal interest" with Defendant, the other five members of the industry and MICA.

Defendant recently produced the Property Casualty Insurers Association of America ("PCIAA") documents discussed in Plaintiff's motion to compel. n5 Thus, the Court need not address Plaintiff's arguments regarding those documents.

n5 Defendant provided this information in the cover letter that accompanied the withheld documents it submitted to the undersigned for an *in camera* review.

The undersigned has considered Plaintiff's argument regarding document 007566-007568 (DN 129 at page 2 and footnote 3) and concludes the common interest privilege does apply because on March 6, 1998, Amerin was a mortgage insurance company that [\*221] shared a common legal interest with Defendant, the other members in [\*\*13] the industry and MICA. According to Defendant, Amerin subsequently merged with another mortgage insurance company to form Radian in 1999 (DN 142 at 3).

The undersigned has also considered Plaintiff's

argument regarding 007431-007433, 007434-007436, 007887-007889. An *in camera* review of these documents reveals that each document sets forth a series of emails, the earlier of which were copied to Pete Mills with Countrywide, a lender. Certainly, the common interest privilege does not apply to the emails that were copied to Mr. Mills. However, the common interest privilege does apply to the subsequent emails. In sum, Defendant may redact from each document the emails that were not copied to Pete Mills before it produces the three documents.

Next, the undersigned concludes that no privilege applies to the following documents 007438-007441, 007443-007458, 007461-007496, 007584-007620, 007704-007706, 007765-007771, 007773-007779, 008168-008234. These non-privileged documents are attachments to communications that are subject to privilege. The undersigned has considered whether these attachments are protected from discovery under the work-product doctrine. n6 While each of these documents [\*\*14] were prepared or obtained before or during this litigation, the undersigned concludes only 007584-007620 was obtained or prepared because of litigation and not for some other purpose. *Toledo Edison Co.*, 847 F.2d 335, 339, 341 (6th Cir. 1988); Edna Selan Epstein, *The Attorney-Client Privilege and the Work-Product Doctrine*, American Bar Association Section of Litigation at 506 (4th Ed. 2001). Reading the material at 007584-007620 could very well reveal the mental impressions, opinions, and trial strategy of Defendant's counsel. Since case law and *Rule 26(b)(3)* imply a near absolute protection is to be accorded to such work-product, the undersigned concludes it should not be produced to Plaintiff. *Hickman v. Taylor*, 329 U.S. 495, 510-513, 67 S. Ct. 385, 91 L. Ed. 451 (1947); see also *Upjohn Co. V. United States*, 449 U.S. 383, 400-402, 101 S. Ct. 677, 66 L. Ed. 2d 584 (1981); *In re Perrigo Company*, 128 F.3d 430, 437 (6th Cir. 1997) (citations omitted); *Toledo Edison Co.*, 847 F.2d at 338-341. Notably, "only disclosures that are 'inconsistent with the adversary system' are deemed to waive work-product

protection." Epstein, *supra*, at 610. Since the material has [\*\*15] not been disclosed to an adversary the undersigned concludes a waiver has not occurred. In sum, Defendant shall produce 007438-007441, 007443-007458, 007461-007496, 007704-007706, 007765-007771, 007773-007779, and 008168-008234 because they are not subject to privilege.

n6 If the document can be said to have been obtained or prepared in anticipation of litigation then it is entitled to a qualified protection from discovery. See *In re Perrigo Company*, 128 F.3d 430, 437 (6th Cir. 1997); *Toledo Edison Co.*, 847 F.2d 335, 338-341 (6th Cir. 1988); see also *Arkwright Mutual Insurance Co. v. National Union Fire Insurance Co.*, 1994 U.S. App. LEXIS 3828, 1994 WL 5899, \* 3 (6th Cir. 1994) (unpublished opinion).

**IT IS HEREBY ORDERED** that Plaintiff's motion to compel is GRANTED IN PART AND DENIED IN PART.

**IT IS FURTHER ORDERED** that on or before August 28, 2006, Defendant shall produce to Plaintiff redacted versions of 007431-007433, 007434-007436, 007887-007889. Specifically, Defendant [\*\*16] may redact from each document the emails that were not copied to Pete Mills.

**IT IS FURTHER ORDERED** that on or before August 28, 2006, Defendant shall produce copies of 007438-007441, 007443-007458, 007461-007496, 007704-007706, 007765-007771, 007773-007779, 008168-008234.

August 2, 2006

**E. Robert Goebel**

**United States Magistrate Judge**



LEXSEE 421 U.S. 168, AT 184

Warning

As of: Apr 05, 2007

**RENEGOTIATION BOARD v. GRUMMAN AIRCRAFT ENGINEERING  
CORP.**

No. 73-1316

**SUPREME COURT OF THE UNITED STATES**

*421 U.S. 168; 95 S. Ct. 1491; 44 L. Ed. 2d 57; 1975 U.S. LEXIS 119; 1 Media L.  
Rep. 2487; 20 Cont. Cas. Fed. (CCH) P83,865*

**Argued January 14, 1975  
April 28, 1975**

**PRIOR HISTORY:**

CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE DISTRICT OF COLUMBIA  
CIRCUIT

**SUMMARY:**

An action instituted by a government defense contractor under the Freedom of Information Act (5 USCS 552) in the United States District Court for the District of Columbia raised the issue whether the Act required public disclosure of various documents generated by the Renegotiation Board and its Regional Boards in determining whether government defense contractors were liable to the government for excessive profits realized on government contracts subject to the Renegotiation Act of 1951 (50 USCS App 1211 et seq.)--the specific documents involved having been issued with regard to renegotiation proceedings with certain contractors during a period ending in 1965. The plaintiff sought disclosure of (1) those Regional Board Reports which had been submitted to the Renegotiation Board, and which recommended that "clearances" be

issued to the contractor on the basis of findings that no excessive profits had been realized, the Board having subsequently approved the "clearances," and (2) Division Reports which had been submitted to the Renegotiation Board by a "division" of the Board (usually consisting of three of its five members) assigned to determine the amount of excessive profits after the contractor was unable to agree with a Regional Board as to such amount, and which included recommendations for final disposition of the cases, along with any additional or contrary views of division members. The District Court held that the reports were "final opinions," within the Freedom of Information Act's disclosure provisions (5 USCS 552(a)(2)(A)), and were not within the Act's fifth exemption (5 USCS 552(b)(5)) from disclosure for "inter-agency or intra-agency memorandums" (325 F Supp 1146, 20 ALR Fed 370). The United States Court of Appeals for the District of Columbia Circuit affirmed (157 App DC 121, 482 F2d 710, 20 ALR Fed 383).

On certiorari, the United States Supreme Court reversed. In an opinion by White, J., expressing the views of seven members of the court, it was held that (1) the reports involved were not "final opinions" subject to disclosure under the Freedom of Information Act, but

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instead fell within the Act's fifth exemption for "inter-agency or intra-agency" memoranda, since (a) only the full Renegotiation Board had the power by law to decide whether excessive profits existed, neither the Regional Boards nor the divisions of the Renegotiation Board having any decisional authority, (b) both types of reports were prepared for use by the Renegotiation Board in its deliberations, thus constituting the kind of predecisional recommendations contemplated by the Act's fifth exemption, and (c) there was no showing that the reasoning in the reports was adopted by the Board as its reasoning, even when it agreed with the conclusion of the report; and (2) it was unnecessary to determine whether the Regional Boards were "agencies" for the purposes of the Act, since if they were separate agencies, their final recommendation would be "inter-agency" memoranda under the Act's fifth exemption, and if they were not separate agencies, their recommendations would be "intra-agency" memoranda under the exemption.

Douglas, J., dissented.

Powell, J., did not participate.

#### LAWYERS' EDITION HEADNOTES:

[\*\*\*LEdHN1]

LAW §64

WAR §15.3

Freedom of Information Act -- Renegotiation Board --  
disclosure of Regional Board Reports --

Headnote:[1A][1B][1C]

Certain Regional Board Reports submitted to the Renegotiation Board and recommending that "clearances" be issued to government defense contractors on the basis of findings that no excessive profits had been realized by the contractors under contracts subject to the Renegotiation Act of 1951 (*50 USCS App 1211 et seq.*)--the Renegotiation Board having subsequently approved the "clearances"--are not "final opinions" made in the adjudication of cases within the meaning of the Freedom of Information Act provision making such final opinions available for public inspection (*5 USCS 552(a)(2)(A)*), but instead fall within the Act's fifth exemption from disclosure for "inter-agency or intra-agency memorandums" (*5 USCS 552(b)(5)*), where (1) only the Renegotiation Board has the power by law to decide whether excessive profits existed, the Regional Boards having no decisional authority whatever, (2) the

Regional Board Reports were prepared prior to the Renegotiation Board's decision and were used by the Board in its deliberations, thus constituting the kind of predecisional deliberative advice and recommendations contemplated by the Act's fifth exemption, and (3) there was no showing that the reasoning in the reports was adopted by the Renegotiation Board; it is unnecessary to determine whether the Regional Boards are themselves "agencies" for the purposes of the Freedom of Information Act, since if they are separate agencies, their final recommendations are "inter-agency" memoranda under the Act's fifth exemption, and if they are not agencies separate from the Renegotiation Board, their recommendations are "intra-agency" memoranda under the exemption.

[\*\*\*LEdHN2]

LAW §64

WAR §15.3

Freedom of Information Act -- Renegotiation Board --  
disclosure of Division Reports --

Headnote:[2A][2B]

Division Reports, which were submitted to the Renegotiation Board by a "division" of the Board (usually consisting of three of its five members) assigned to determine the amount of excessive profits realized by a government defense contractor after the contractor was unable to agree with a Regional Board as to the amount of excessive profits recoverable by the government under the Renegotiation Act of 1951 (*50 USCS App 1211 et seq.*), and which included a recommendation for final disposition of the matter, along with any additional or contrary views of division members, are not "final opinions, including concurring and dissenting opinions," made in the adjudication of cases within the meaning of the Freedom of Information Act provision making such "final opinions" available for public inspection (*5 USCS 552(a)(2)(A)*), but instead fall within the Act's fifth exemption from disclosure for "inter-agency or intra-agency memorandums" (*5 USCS 552(b)(5)*), where (1) only the full Renegotiation Board has the power by law to decide whether excessive profits existed, a division of the Board having no legal decisional authority but merely analyzing and recommending; (2) the Division Reports were prepared prior to the Board's decision for use in the deliberations by the full Board, including the members of the division who might change their minds and who might have included thoughts or arguments in the report with which they were not in

421 U.S. 168, \*, 95 S. Ct. 1491, \*\*;  
44 L. Ed. 2d 57, \*\*\*LEdHN2; 1975 U.S. LEXIS 119

agreement or which were not tentative; and (3) there was no showing that the reasoning in the reports was adopted by the Board as its reasoning, even when it agreed with the conclusion of a report.

[\*\*\*LEdHN3]

LAW §64

Freedom of Information Act -- exemption of intra-government memoranda --

Headnote:[3A][3B]

Subsection (b)(5) of the Freedom of Information Act (5 USCS 552(b)(5)) which exempts from public disclosure inter-agency or intra-agency memoranda that would not be available by law to a party other than an agency in litigation with the agency, does not include documents which are "final opinions" made in the adjudication of cases, subject to disclosure under the Act (5 USCS 552(a)(2)(A)).

[\*\*\*LEdHN4]

LAW §64

INSPECTION §13.5

Freedom of Information Act -- exemption of intra-government memoranda --

Headnote:[4]

Subsection (b)(5) of the Freedom of Information Act (5 USCS 552(b)(5))--which exempts from public disclosure inter-agency or intra-agency memoranda that would not be available by law to a party other than an agency in litigation with the agency--incorporates the privileges which the government enjoys under the relevant statutory and case law in the pretrial discovery context; and both the Freedom of Information Act's provision and the case law which it incorporates distinguish between predecisional memoranda prepared in order to assist an agency decisionmaker in arriving at his decision, which are exempt from disclosure, and postdecisional memoranda setting forth the reasons for an agency decision already made, which are not.

[\*\*\*LEdHN5]

LAW §64

Freedom of Information Act -- exemption of "inter-agency" memoranda --

Headnote:[5]

Since the exemption of certain memoranda from public disclosure contained in subsection (b)(5) of the Freedom

of Information Act (5 USCS 552(b)(5)) includes "inter-agency" memoranda as well as "intra-agency" memoranda, the exemption is intended to permit one agency possessing decisional authority to obtain written recommendations and advice from a separate agency not possessing such decisional authority without requiring that the advice be any more disclosable than similar advice received from within the agency.

[\*\*\*LEdHN6]

LAW §64

WAR §15.3

Freedom of Information Act -- applicability to Renegotiation Board --

Headnote:[6A][6B]

Congress intended the Renegotiation Board to be subject to the provisions of the Freedom of Information Act (5 USCS 552).

[\*\*\*LEdHN7]

LAW §64

WAR §15.3

Renegotiation Board -- necessity of written opinions --

Headnote:[7]

Since the Renegotiation Act of 1951 (50 USCS App 1221) exempts the Renegotiation Board from all provisions of the Administrative Procedure Act (5 USCS 551 et seq.) except for the Public Information Section (Freedom of Information Act, 5 USCS 552), the opinion writing section of the Administrative Procedure Act (5 USCS 557) is inapplicable to Board decisions; and the Board has no affirmative obligation under the Freedom of Information Act to write opinions.

[\*\*\*LEdHN8]

LAW §64

Freedom of Information Act -- agency opinions --

Headnote:[8]

The Freedom of Information Act (5 USCS 552) imposes no independent obligation on agencies to write opinions; it simply requires them to disclose the opinions which they do write.

[\*\*\*LEdHN9]

COURTS §151

Renegotiation Board documents -- public disclosure -- matter for Congress --

Headnote:[9]

It is not for the United States Supreme Court, under the purported authority of the Freedom of Information Act (5 USCS 552), to require disclosure of documents of the Renegotiation Board and its Regional Boards which are not final opinions, which do not accurately set forth the reasons for the Board's decisions, and the disclosure of which would impinge upon the Board's pre-decisional processes; if the public interest suffers by reason of the Board's failure to explain some of its decisions, the remedy is for Congress to require it to do so.

#### SYLLABUS:

Pursuant to the Government contract renegotiation process in effect under the Renegotiation Act of 1951 for so-called Class A cases (those in which the contractor reported profits of more than \$ 800,000 on the relevant contracts) during the period involved in this case, if the Regional Board made a recommendation as to the amount of excessive profits in the year in issue rather than recommending a clearance, i. e., a unilateral determination that a contractor realized no excessive profits during the year in issue, the case, if the contractor declined to enter into an agreement, would be reassigned to the Renegotiation Board (Board). The case file, including the Regional Board Report, was then transmitted to the Board and assigned to a division of the Board, usually consisting of three of its five members, which in due course would make its own decision and submit to the full Board a Division Report, including a recommendation for final disposition of the case. If the Regional Board concluded that no excessive profits had been realized and that a clearance should therefore issue, a "final recommendation" that a clearance be issued was sent to the Board, which considered the case on the basis of the Regional Board Report. Respondent brought an action pursuant to the Freedom of Information Act (FOIA), 5 U. S. C. § 552, seeking disclosure of certain Regional Board Reports resulting in a recommendation of clearance and Board approval, and of Division Reports in other cases, all related to and issued during renegotiation proceedings involving 14 other companies during the period 1962-1965. The District Court ultimately granted relief on the grounds that both the Regional Board and Division Reports were "final opinions" within the meaning of § 552(a)(2)(A), which requires a Government agency to make available to the public "final opinions, including concurring and dissenting opinions, as well as

orders, made in the adjudication of cases," and were not exempt from disclosure under § 552(b)(5) (Exemption 5) as "inter-agency or intra-agency memorandums . . . which would not be available by law to a party other than an agency in litigation with the agency." The Court of Appeals affirmed, further holding that even if the Regional Board Reports were not "final opinions" of the Board, they were disclosable as final opinions of the Regional Board, which was to be considered an "agency" for purposes of the FOIA. Held: Neither the Regional Board nor Division Reports are final opinions and they do fall within Exemption 5, since (1) only the full Board has the power by law to make the decision whether excessive profits exist; (2) both types of reports are prepared prior to that decision and are used by the Board in its deliberations; and (3) the evidence fails to support the conclusion that the reasoning in the reports is adopted by the Board as its reasoning, even when it agrees with a report's conclusion. Pp. 183-190.

(a) The Regional Board Reports, being prepared long before the Board reached its decision and being used by it as a basis for discussion, are precisely the kind of predecisional deliberative advice and recommendations contemplated by Exemption 5 which must remain uninhibited and thus undisclosed, in order to supply maximum assistance to the Board in reaching its decision. Regardless of whether the Regional Boards are agencies for Class A purposes so that their final recommendations are inter-agency memoranda, or are not agencies separate from the Board so that their recommendations are intra-agency memoranda, the Regional Boards' total lack of decisional authority brings their reports within Exemption 5 and prevents them from being "final opinions." Pp. 185-188.

(b) Since the Division Reports were prepared before the Board reached its decision and to assist it in its deliberations, and were used by the full Board as a basis for discussion, the Board should not be deprived of such a thoroughly uninhibited version of this valuable deliberative tool by making such reports public on the unsupported assumption that they always disclose the final views of at least some Board members. Pp. 189-190. *157 U. S. App. D.C. 121, 482 F.2d 710, reversed.*

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, MARSHALL, BLACKMUN, and REHNQUIST, JJ., joined. DOUGLAS, J., dissented. POWELL, J., took no

421 U.S. 168, \*; 95 S. Ct. 1491, \*\*;  
44 L. Ed. 2d 57, \*\*\*LEdHN9; 1975 U.S. LEXIS 119

part in the consideration or decision of the case.

#### COUNSEL:

Allan Abbot Tuttle argued the cause for petitioner. With him on the brief were Solicitor General Bork, Assistant Attorney General Hills, Leonard Schaitman, and David M. Cohen.

Tom M. Schaumberg argued the cause for respondent. With him on the brief was Frederick B. Abramson. \*

\* Melvin L. Wulf, Carol A. Cowgill, and Marvin M. Karpatkin filed a brief for the American Civil Liberties Union et al. as amici curiae urging affirmance.

#### JUDGES:

Burger, Douglas, Brennan, Stewart, White, Marshall, Blackmun, Rehnquist; Powell took no part in the consideration or decision of the case.

#### OPINION BY:

WHITE

#### OPINION:

[\*170] [\*\*\*62] [\*\*1493] MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether certain documents - documents generated [\*\*\*63] by the Renegotiation Board (Board) and by its Regional Boards in performing their task of deciding whether certain Government contractors have earned, and must refund, "excessive profits" on their Government contracts - are "final opinions" explaining the reasons for agency decisions already made, and thus expressly subject to disclosure pursuant to the Freedom of Information Act (Act), 5 U.S.C. § 552(a)(2)(A), or are instead predecisional consultative memoranda exempted from disclosure by § 552(b)(5). See *NLRB v. Sears, Roebuck & Co.*, ante, p. 132.

I

Essential to the consideration of whether the documents at issue in this case must be disclosed pursuant to the relevant provisions of the Act is an understanding of the renegotiation process, a process that itself serves to define the documents in issue and hereinafter described. n1 [\*171] Under the Renegotiation Act of 1951, 65 Stat. 7, as amended, 50 U.S.C. App. § 1211 et seq., the Government is entitled to recoup from those who hold contracts or subcontracts with certain departments of the Government [\*\*1494] any "excessive profits" received by such persons on such contracts. The amount of the profits which will be considered "excessive" in connection with a particular contract depends upon the statutory factors which are set forth in the margin. n2 As the Board's name suggests, it [\*172] endeavors to, and in fact does, conclude the vast majority of its cases by agreement. 50 U.S.C. App. § 1215(a) [\*\*\*64] (1970 ed., Supp. I). Absent an agreement, however, the Board must decide either to issue a "clearance," i.e., a unilateral determination that the contractor realized no excessive profits during the year in issue, or to issue a unilateral order fixing excessive profits at a specified amount and directing the contractor to refund them. The unilateral order is final unless a de novo determination regarding excessive profits is sought within 90 days before the Court of Claims. n3 It is in those cases not terminated by agreement that the documents at issue in this case were generated. n4 With this in mind, we turn to the details of the renegotiation process as it existed during the period relevant to the decision in this case. n5

n1 See generally S. Rep. No. 93-927, pp. 1-2 (1974); Staff Review of Recommendations Made on the Renegotiation Process: A Preliminary Report 3-5 (1974) (prepared for the use of the House Committee on Ways and Means and the Senate Committee on Finance by the staff of the Joint Committee on Internal Revenue Taxation (hereinafter Staff Review)).

n2 Title 50 U.S.C. App. § 1213 (e) reads as follows:

"(e) The term 'excessive profits' means the portion of the profits derived from contracts with

421 U.S. 168, \*172; 95 S. Ct. 1491, \*\*1494;  
44 L. Ed. 2d 57, \*\*\*64; 1975 U.S. LEXIS 119

the Departments and subcontracts which is determined in accordance with this title [ §§ 1211 to 1224 of this Appendix ] to be excessive. In determining excessive profits favorable recognition must be given to the efficiency of the contractor or subcontractor, with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities, and manpower; and in addition, there shall be taken into consideration the following factors:

"(1) Reasonableness of costs and profits, with particular regard to volume of production, normal earnings, and comparison of war and peacetime products;

"(2) The net worth, with particular regard to the amount and source of public and private capital employed;

"(3) Extent of risk assumed, including the risk incident to reasonable pricing policies;

"(4) Nature and extent of contribution to the defense effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

"(5) Character of business, including source and nature of materials, complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over;

"(6) Such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted."

These statutory "factors" were developed by the War Contracts Price Adjustment Board during World War II, were incorporated by Congress into the original Renegotiation and Revenue Acts of that era, were continued in the Renegotiation Act of 1951, and have undergone little change since their initial development. Staff Review, *supra*, n. 1, at 23 and nn. 34-36.

n3 Prior to July 1971, de novo review was by the Tax Court. See 85 Stat. 98.

n4 Through June 30, 1970, 3,524 out of 4,006 cases not resulting in clearances terminated by agreement. Of the remaining 482 cases, the Board's unilateral orders were challenged in court in 203 cases.

n5 The description of the renegotiation process is of the process existing between 1962 through 1965 - the period in which the documents relevant to this case were generated within the Board - notwithstanding changes made since. Unless otherwise indicated, all citations to the Code of Federal Regulations throughout this opinion are to the Renegotiation Board's regulations in effect during this period (i.e., the Code as revised January 1, 1967).

Persons holding contracts or subcontracts with certain departments of the Government were required to file financial statements as prescribed by the Board, 50 *U.S.C. App. § 1215(e)(1)* (1964 ed.); 32 CFR Part 1470, if their receipts from those contracts met the requisite jurisdictional amount, 50 *U.S.C. App. § 1215(f)*. These statements [\*173] were reviewed by the staff of the Board, and, if that initial review indicated the possibility that the contractor realized "excessive" profits, the "case" was referred to one of two Regional Boards for further action. n6 At the time of this assignment, [\*\*1495] each case was designated as a Class A case or a Class B case: the former if the contractor had reported profits of more than \$ 800,000 on the relevant contracts covered in his financial statement, and the latter in all other cases. n7 The principal difference between Class A cases and Class B cases was that the Regional Boards had some final decisional authority in the latter and none in the former. 32 CFR §§ 1471.2(b), 1473.2(a), 1474.3(a), and 1475.3(a). Since the documents sought by respondent in this case were all generated in Class A cases, only the procedure applicable to those cases will be discussed.

n6 The reference is normally made on the basis of geographical considerations, 32 CFR § 1471.2(a). These Regional Boards were established in 1952 by regulation, 32 CFR § 1451.32, pursuant to statutory authorization, 50 *U.S.C. App. § 1217(d)*. Unlike members of the

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Board, who are appointed to the Board by the President, Regional Board members are civil servants.

n7 Under certain circumstances, cases may be redesignated after their initial designation. 32 CFR § 1471.2(f).

After reference to a Regional Board, a case was usually assigned to a staff team consisting of an accountant and a renegotiator. n8 This [\*\*\*65] team, after determining what further information from the contractor was required, secured such information and received any submissions [\*174] the contractor might have wanted to make with regard to his case, including his position concerning the statutory factors that largely determined whether he had received "excessive profits," 50 U.S.C. App. § 1213 (e). A document entitled "Report of Renegotiation" was then prepared by the team. Part IA of that report, the accountant's section, contained pertinent financial and accounting data and was furnished to the contractor upon request. n9 Part II of the Report of Renegotiation, prepared by the renegotiator, and not furnished to the contractor, generally contained "an analysis and evaluation of the case; and a recommendation with respect to the amount, if any, of excessive profits for the fiscal year under review." 32 CFR § 1472.3 (d). According to testimony given in this case, a Part II in outline form would be as follows: S

"A. Sources of Information

"B. Application of Statutory Factors:

"1. Character of Business

"2. Capital Employed

"3. Extent of Risk Assumed

"4. Contribution to the Defense Effort

"5. Efficiency

"6. Reasonableness of Costs and Profits

"(a) Costs

"(b) Pricing

"(c) Profits

"C. Special Matters

"D. Conclusion and Recommendation."I

n8 During the years 1962-1965, a renegotiator might be a staff member employed by the Regional Board or a member of the Regional Board itself. Under the Board's current regulations, a member of the Regional Board who acts as a renegotiator in a specific case is thereafter barred from participation in the case as a member of the Regional Board. 32 CFR § 1472.3 (d) (1974). There was no comparable regulation in effect during the period relevant to this case.

n9 32 CFR § 1472.3 (d). Under 1972 amendments to the regulations, the Report of Renegotiation was discontinued and was replaced by other reports not relevant to this case. See generally 32 CFR §§ 1472.3 (e)-(g), and (i) (1974).

After a Report of Renegotiation was prepared, but [\*175] prior to its submission to the Regional Board, the team assigned to the case endeavored to meet with the contractor to resolve "any issues or disputed matters of fact, law or accounting." 32 CFR § 1472.3 (b). The report was then submitted to the Regional Board.

After reviewing the Report of Renegotiation and the case file, the Regional Board would make a "tentative recommendation [\*\*1496] with respect to the amount of excessive profits realized in the fiscal year under review." 32 CFR § 1472.3 (e). n10 This "tentative recommendation" could "be in an amount greater than, equal to, or less than the amount recommended in the Report of Renegotiation." Ibid. After a "tentative recommendation" was made, the contractor, unless he declined, attended a meeting with the renegotiation team at which he was informed of the tentative recommendation of the Regional Board, as well as the Regional Board's reasons therefor, and was afforded the opportunity to [\*\*\*66] respond. The Regional Board would then enter a "final recommendation" either that a clearance be issued or that excessive profits be found in an amount greater than, equal to, or less than the tentative

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recommendation reached previously. If this final recommendation of the Regional Board corresponded to that of the staff team or panel, the report would be signed by the chairman of the Regional Board, signifying the approval of the staff or panel recommendation; if the Regional Board's final recommendation differed from the prior recommendation, an addendum would be attached to the report. The Report of Renegotiation with addenda, if any, will hereafter be referred to for convenience as the Regional Board Report.

n10 Under current regulations, the Regional Board no longer makes this "tentative recommendation" in Class A cases, 32 CFR §§ 1472.3 (k) and (l) (1974).

[\*176] (i)

Assuming the Regional Board did not recommend a clearance, it notified the contractor of its final recommendation in an effort to obtain an agreement. Toward this end, the contractor, upon request, would be furnished a "summary of the facts and reasons" (Summary) upon which the recommendation was based. 32 CFR § 1472.3 (i). n11 If a contractor did not request such a document, there is no indication that one was ever prepared in his case.

n11 This document was made available to the general public by regulation on February 24, 1971. 32 *Fed Reg.* 3808, 32 CFR § 1480.5 (a) (1972). When the Board first made the summaries of facts and reasons available to the public by regulation, it specifically stated that its action was taken "[w]ithout regard to the provisions of 5 U.S.C. [§ ] 552 (a)(2)...." *Ibid.* Subsequent to the effective date of that regulation, the District Court in this case, notwithstanding the fact that the controversy over respondent's access to the summaries of facts and reasons sought in this action had apparently been mooted, held that these documents must be made available under the ACT as "final opinions" of either the Board or the Regional Board, except in certain circumstances. 325 *F. Supp.* 1146, 1151-1152 (DC 1971). The Board has since amended its regulations, indicating that its own interpretation of the Act as to these documents is now consistent

with that of the District Court. 32 CFR § 1480.5 (a) (1974). Under current Board regulations, the contractor automatically receives a document entitled "Proposed Opinion," if he has not indicated a willingness to enter into an agreement with the Board. 32 CFR § 1477.3 (a) (1974).

If the contractor declined to enter into an agreement, the case was then reassigned to the Board, to which the case file including the Regional Board Report was transmitted. The case was then assigned to a "division" of the Board, usually consisting of three of its five members, which would undertake a study of the case. Staff personnel would go over both Part IA and Part II of the Regional Board Report and indicate, in memoranda, their [\*177] agreement or disagreement with the recommendation made by the Regional Board. At an appropriate juncture, the contractor would be afforded an opportunity to meet with the division members to discuss his case and submit additional relevant material. The division, in due course, would reach its own decision as to what recommendation should be made to the Board, "not... bound or limited in any manner [\*\*1497] by any evaluation, recommendation or determination of the Regional Board." 32 CFR § 1472.4 (b). The division would then submit to the full Board a report of the case, prepared by one of the members (Division Report), and including a recommendation for final disposition along with additional or contrary views, if [\*\*\*67] any, of the other division members. The Division Report is one of the categories of documents sought by respondent under the Act.

The Board would then meet, each member having had the opportunity to study the case file and the report submitted on behalf of the division, discuss the case, and vote on a final disposition. Neither the Board nor any of its members were bound by any prior recommendations. The Board was free, after discussion, to reject the proposed conclusion reached in the Division Report, or to accept it for reasons other than those set forth in the report. 32 CFR § 1472.4 (d). Assuming the Board did not decide that a clearance should issue, the contractor was then notified of the Board's conclusion and would be given, at his request, a Summary to enable him to decide whether to enter into an agreement with the Board. If an agreement was not reached, the Board would then enter a unilateral order within a specified time, 32 CFR Part 1475, and would issue, pursuant to statute, at the request



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of the contractor, a "statement of such determination, of the facts used as a basis therefor, and of its reasons for such determination." 50 U.S.C. App. [\*178] § 1215 (a) (Statement). n12 Absent a contractor's request for a Statement, there is no indication that one was ever prepared in his case. For this type of case, the renegotiation process thus came to an end. n13

n12 The "Summaries" and "Statements" were similar in both format and content. App. 35-41; 32 CFR § 1477.4. Under current Board regulations, the Regional Board now issues to the contractor a "Proposed Opinion," in lieu of the "summary of facts and reasons" discussed above, and furnishes to the contractor a "Regional Board Opinion" when the Regional Board's recommendation is forwarded to the Board. 32 CFR §§ 1477.3 (a) and (c) (1974). The Board also issues a "Final Opinion" in place of the Statement at the same time as it enters a unilateral order. 32 CFR § 1477.3 (b) (1974). All of these documents are available to the public. 32 CFR § 1480.5 (a) (1974).

n13 A dissatisfied contractor had the right at this point to bring an action in the Tax Court, which had jurisdiction to determine de novo whether excessive profits had been realized (see n. 3, supra); jurisdiction of these cases has subsequently been transferred to the Court of Claims. See *Renegotiation Board v. Bannercrest Clothing Co.*, 415 U.S. 1, 15 and n. 14 (1974).

(ii)

If the Regional Board concluded that no excessive profits had been realized by a particular contractor and that a clearance should therefore issue - or if the contractor agreed with the Regional Board as to an amount of excessive profits before the case was reassigned to the Board - then a Division Report was never created in that case. Instead, a "final recommendation" that a clearance be issued or that the agreement be consummated was sent to the Board, and the Board considered the case on the basis of the Regional Board Report, together with comments made by the Board's accounting and review divisions. After meeting and discussing the case on the basis of these documents, the Board decided whether to approve the

Regional Board's conclusion. If it did, appropriate closing documents were prepared by the [\*179] Regional Board. No explanation of the Board's reasons for agreeing with the Regional Board's recommendation was prepared or sent to the contractor; and it is not possible to know whether the Board agreed with the reasoning [\*\*\*68] of the Regional Board Report or just its conclusion. If the conclusion of the Regional Board was not approved, [\*\*1498] the case was either returned to the Regional Board for further factfinding, or assigned to a division of the Board as though no recommendation agreeable to the contractor had ever been made. The Regional Board Reports in the category of cases in which clearances were recommended and approved by the Board - and therefore in which no Division Report was created - is the other type of document in issue in this case.

## II

Against the foregoing backdrop, respondent filed a complaint, pursuant to the Act, in the District Court on June 27, 1968, seeking disclosure of "certain final opinions, orders and identifiable records" related to or issued during renegotiation proceedings involving 14 other companies during the period 1962-1965. n14 Respondent additionally sought certain documents related to its then-pending renegotiation proceedings before the Board for 1965, but later agreed that it was not seeking access to "[i]ntra-agency memoranda and communications consisting of advisory [\*180] opinions, conclusions recommendations, and analyses prepared by personnel and members of the Board" in its own case. 138 U.S. App. D.C. 147, 150, 425 F. 2d 578, 581 (1970). The District Court denied relief. On appeal, the Court of Appeals appears to have assumed that the "opinions" sought by respondent were limited to Statements and Summaries as defined in 32 CFR § 1480.8. n15 138 U.S. App. D.C., at 148, and n. 2, 425 F. 2d, at 579, and n. 2. On this basis, the Court of Appeals reversed, rejecting the claim of the Renegotiation Board that the documents sought were "completely immune" from disclosure under 5 U.S.C. § 552(b)(4), the provision of the Act exempting certain privileged or confidential information submitted to the Government by any person. n16 The court, stating that the Board was required to make available "final opinions, including concurring and dissenting [\*\*\*69] opinions," n17 remanded the case to the District Court for further proceedings in which the requested documents were to be made available after "suitable deletions." 138 U.S. App. D.C., at 150, 425 F. 2d, at 581.

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n14 By reference in its complaint to correspondence between it and the Board of April 26, 1968, respondent requested access to "final opinions, determinations, unilateral orders, agreements, clearance notices and letters not to proceed issued in the adjudication of renegotiation cases" and "written summaries of the facts and reasons upon which such final opinions, determinations, unilateral orders and agreements have been reached." Nothing in the complaint or the letter suggests that, at that time, respondent sought the Regional Board Report, or the Division Report, in any of these renegotiation cases.

n15 Title 32 CFR § 1480.8 read in pertinent part:

"Except as authorized... opinions and orders will not be published or made available to the public... inasmuch as they are regarded as confidential... by reason of the confidential data furnished by contractors.... For the purposes of this paragraph, the term 'opinion' includes a statement furnished pursuant to [32 CFR Part 1477] and the term 'order' includes an agreement to eliminate excessive profits, as well as a unilateral determination. Opinions and orders are not cited as precedents in any renegotiation proceedings." Part 1477, as written during the period 1962-1967, included only Statements and Summaries.

n16 Title 5 U.S.C. § 552(b)(4) exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential matters."

n17 *138 U.S. App. D.C., at 149, 425 F. 2d, at 580*, quoting from 5 U.S.C. § 552(a)(2)(A).

n18 A more detailed description of the documents sought is set out in the opinion written by the District Court after the initial remand from the Court of Appeals, *325 F. Supp., at 1151*.

[\*181] Subsequent to the remand of the case by the Court of Appeals, the Board turned over to respondent certain documents, including Statements and Summaries,

in attempted compliance with the mandate of that court. Respondent, not satisfied with the documents so disclosed, moved in the District Court for the disclosure, inter alia, of (1) Division Reports in all cases in which neither "Statements" nor "Summaries" were created; (2) Regional Board Reports resulting [\*\*1499] in a clearance; and (3) any document concurring in or dissenting from (1) and (2) above. n18

On the question whether these documents were "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases," 5 U.S.C. § 552(a)(2)(A), the District Court permitted respondent to take the deposition of the then Chairman of the Board. That deposition of the Chairman constitutes almost the only evidence of record in this case bearing on this question other than the pertinent statutes and regulations. Although conceding, as it had to on the basis of the Chairman's deposition, that only the Board had final decisional authority, and that it studies and considers, but does not adopt Regional Board or Division Reports, the District Court held that these reports were "final opinions" for purposes of the Act and rejected the Board's contention that the documents were specifically exempted from disclosure under subsection (b)(5) of the Act, 5 U.S.C. § 552(b)(5) (Exemption 5), which encompasses: S

"inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." I [\*182] As to the Regional Board Reports in clearance cases, the court characterized the clearance as the "decision" of the Regional Board "unless the Board is not in accord"; and held that "[i]n order for the public to be fully informed, the reasons behind the clearance... must be made available and in this type of case such... reasons are found in the Regional Board's report." As to the Division Reports, the court said that, although the Board may disagree with the reasoning of the report, "[i]t is in fact the last document which explains reasons for the Board's decision," it should "at the very least... reflect the analysis of one member," and thus it must be disclosed at least as a "concurring [or] dissenting opinion." 5 U.S.C. § 552(a)(2)(A). On appeal, the Court of Appeals affirmed the "findings of fact" and "conclusions" reached by the District Court and found two additional grounds supportive of the lower court's judgment as to the Regional Board Reports. The court held that, even if the [\*\*\*70] Regional Board Reports recommending a

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clearance subsequently approved by the Board n19 were not "final opinions" of the Board, they were disclosable as final opinions of the Regional Board: the Regional Board itself was to be considered an "agency" for purposes of the Act, and the reports were certainly its "final opinions" and, as such, they were disclosable under the express provisions of 5 U.S.C. § 552(a)(2)(A) and therefore outside the scope of Exemption 5. In concluding that the Regional Boards are agencies, the court relied in part on the power of the Regional Boards finally to dispose of certain Class B [\*183] cases. n20 In concluding that its decisions were "final," notwithstanding inevitable Board review, it analogized the power of the Regional Board in Class A cases to the power of a United States district court: the former's decisions being reviewable by the Board and the latter's by a United States court of appeals. The fact that the Regional Board's decisions were subject to review did not obviate the [\*1500] fact, any more than it does in the case of a United States district court, that its decisions are "final," 157 U.S. App. D.C. 121, 128, 482 F. 2d 710, 717 (1973), and that its report leading to a clearance was performe a "final opinion" of an "agency" subject to disclosure under the Act. The Court of Appeals additionally held that the Regional Board Reports were, in any event, "identifiable records," 5 U.S.C. § 552(a)(3), which are disclosable, unless exempt, and that these reports were not within the purview of Exemption 5 of the Act, because they "are not solely part of the consultative and deliberative process, but rather reflect actual decisions communicated outside the agency." 157 U.S. App. D.C., at 129, 482 F. 2d, at 718. See NLRB v. Sears, Roebuck & Co., ante, p. 132.

n19 The District Court had held the reports of Regional Boards to be disclosable only in instances where a regional Board made a final recommendation for a clearance and the Board concurred in the recommendation. *Id.*, at 1154. The Court of Appeals did not purport to extend the holding of the District Court to Regional Board Reports in other contexts.

n20 157 U.S. App. D.C. 121, 126-127, and nn. 20 and 23, 482 F. 2d 710, 715-716, and nn. 20 and 23 (1973).

The Board brought the case to this Court and we granted certiorari, 417 U.S. 907 (1974), setting the case for argument with NLRB v. Sears, Roebuck & Co., ante, p. 132, in order to resolve the important questions presented particularly with respect to the proper construction and interpretation of Exemption 5 of the Act. For reasons set forth hereafter, we reverse the judgment of the Court of Appeals.

### III

[\*\*LEdHR1A] [1A] [\*\*LEdHR2A] [2A] [\*\*LEdHR3A] [3A] [\*\*LEdHR4] [4] Strictly speaking, the issue in this case is whether the Division Reports and the Regional Board Reports fall [\*184] within Exemption 5, pertaining to "inter-agency or intra-agency memorandums... which would not be available by law to a party other than an agency in litigation with the agency." [\*\*71] 5 U.S.C. § 552(b)(5). n21 As we hold today in the companion case of NLRB v. Sears, Roebuck & Co., ante, at 149, Exemption 5 incorporates the privileges which the Government enjoys under the relevant statutory and case law in the pretrial discovery context; and both Exemption 5 and the case law which it incorporates distinguish between predecisional memoranda prepared in order to assist an agency decisionmaker in arriving at his decision, which are exempt from disclosure, and postdecisional memoranda setting forth the reasons for an agency decision already made, which are not. Because only the full Board has the power by law to make the decision whether excessive profits exist; because both types of reports involved in this case are prepared prior to that decision and are used by the Board in its deliberations; and because the evidence utterly fails to support the conclusion that the reasoning in the reports is adopted by the Board as its reasoning, even when it agrees with the conclusion of a report, we conclude [\*185] that the reports are not final opinions and do fall within Exemption 5.

[\*\*LEdHR3B] [3B]

n21 Grumman claims that the documents are "final opinions" expressly made disclosable, pursuant to 5 U.S.C. § 552(a)(2)(A). However, as we noted in the companion case of NLRB v. Sears, Roebuck & Co., ante, at 147-148, a conclusion that the documents are within

Exemption 5 would be dispositive in the Government's favor, since the Act "does not apply" to such documents; and a contrary conclusion would be dispositive against the Government, since it concedes that the documents are "identifiable records" otherwise disclosable pursuant to 5 U.S.C. § 552(a)(3). Thus, strictly speaking, the question whether the documents are "final opinions" is relevant only in deciding whether Exemption 5 applies to them and is important only because we have construed Exemption 5 in *NLRB v. Sears, Roebuck & Co.*, ante, at 153-154, not to include "final opinions" within the meaning of 5 U.S.C. § 552(a)(2)(A).

#### A. Regional Board Reports

It is undisputed that the Regional Boards had no legal authority to decide whether a contractor had received "excessive profits" in Class A cases. n22 [\*\*1501] In such cases, the Regional Boards could investigate and recommend, but only the Board could decide. 32 CFR §§ 1472.3-1472.4. The reports were prepared long before the Board reached its decision. The Board used the Regional Board Report as a basis for discussion and, even when it agreed with the Regional Board's conclusion, it often did so as a result of an analysis of the flexible statutory factors completely different from that contained in the Regional Board Report. Chairman Hartwig testified: I

"[W]hen the recommendation clearance of the Regional Board comes up on the Board agenda, the Board simply approves or disapproves the clearance. It does not adopt any of the memoranda that are before it. It does not ratify or [\*\*\*72] adopt any of these staff memoranda. It simply, in the exercise of its judgment, says it is a clearance or it isn't a clearance. [\*186]

And there is no Board-adopted document which you could call an opinion." App. 79.1

n22 We decline to consider whether this case would be different if the Regional Boards had de facto decisional authority - i.e., if, instead of making up its own mind in each case, the Board "reviewed" the Regional Board's recommendation under a clearly erroneous or some other deferential standard; or if the Board failed even to

review the vast bulk of the reports, absent special circumstances. There is no evidence in the record indicating that the Regional Boards had such de facto authority. Indeed, the evidence is to the contrary. In a recent review by the Comptroller General of 209 cases, the Board concurred in the Regional Board's recommendation only 85 times. Comptroller General, Report to the Congress: The Operations and Activities of the Renegotiation Board 33-34 (B-163520 - May 1973).

[\*\*\*LEdHR1B] [1B]The Regional Board Reports are thus precisely the kind of predecisional deliberative advice and recommendations contemplated by Exemption 5 which must remain uninhibited and thus undisclosed, in order to supply maximum assistance to the Board in reaching its decision. Moreover, absent indication that its reasoning has been adopted, there is little public interest in disclosure of a report. "The public is only marginally concerned with reasons supporting a [decision] which an agency has rejected, or with reasons which might have supplied, but did not supply, the basis for a [decision] which was actually adopted on a different ground." *NLRB v. Sears, Roebuck & Co.*, ante, at 152. Indeed, release of the Regional Board's reports on the theory that they express the reasons for the Board's decision would, in those cases in which the Board had other reasons for its decision, be affirmatively misleading. *Sterling Drug, Inc. v. FTC*, 146 U.S. App. D.C. 237, 246-247, 450 F. 2d 698, 707-708 (1971); *International Paper Co. v. FPC*, 438 F. 2d 1349, 1358 (CA2), cert. denied, 404 U.S. 827 (1971). Accordingly, these reports are not "final opinions," they do fall within the protection of Exemption 5, and they are not subject to compulsory disclosure pursuant to the Act.

The Court of Appeals' attempt to impute decisional authority to Regional Boards by analogizing their final recommendations to the final decisions of United States district courts must fail. The decision of a United States district court, like the decision of the General Counsel of the NLRB discussed in *NLRB v. Sears Roebuck & Co.*, ante, at 158-159, n. 25, has real operative effect independent of "review" by a court of appeals: absent appeal by one of the parties, the decision has the force of law; and, even if an appeal is filed, the court [\*187] of appeals will be bound, within limits, by certain of the

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district court's conclusions. n23 The recommendation of a Regional Board, by contrast, has no operative effect independent of the review: consideration of the case by the Board is not dependent on the decision by a party to "appeal" - such consideration is an inevitable event without which there is no agency decision; and the recommendation of the Regional Board carries no legal weight whatever before the Board - review by the latter is, as the Court of Appeals conceded, [\*\*1502] de novo. Indeed, "review" is an entirely inappropriate word to describe the process by which the Board decides whether to issue a clearance following a recommendation to that effect by the Regional Board. The latter's recommendation is functionally indistinguishable from the recommendation of any agency staff member whose judgment has earned the respect of a decisionmaker. There is simply no sense in which Regional Boards have the power to make "final dispositions" and thus no sense in which the explanations of [\*\*\*73] their recommendations can be characterized as "final opinions." n24 See *NLRB v. Sears, Roebuck & Co.*, ante, at 158-159.

n23 Fact determinations, for example, are reviewable under a "clearly erroneous" standard and certain legal judgments only for abuse of discretion.

n24 The distinction, between "recommendations" and "final opinions" subject to review, for Exemption 5 purposes is compelling. In order that a decisionmaker consider all the arguments in support of all the options, those who recommend should be encouraged to make arguments which they would not make in public and with which they may even disagree. However, if their recommendations were to have operative effect and thus qualify as decisions - even though subject to review - they should be discouraged from basing their decisions on arguments which they would not make publicly and with which they disagree.

[\*\*\*LEdHR1C] [1C] [\*\*\*LEdHR5] [5] In concluding that the Regional Board Reports are within the scope of Exemption 5, it is unnecessary to [\*188] decide whether, as respondent strenuously argues and the Court

of Appeals concluded, the Regional Boards are themselves "agencies" for the purposes of the Act. Respondent and the court below proceed on the premise that the final written product of an "agency's" deliberations may never fall within Exemption 5, and reason that since the Regional Board Report is the final product of the Regional Board, it must therefore be disclosable if the Regional Board is a separate agency. n25 The premise is faulty, however, overlooking as it does the fact that Exemption 5 does not distinguish between inter- agency and intra- agency memoranda. By including inter- agency memoranda in Exemption 5, Congress plainly intended to permit one agency possessing decisional authority to obtain written recommendations and advice from a separate agency not possessing such decisional authority without requiring that the advice be any more disclosable than similar advice received from within the agency. Thus, if the Regional Boards are agencies for Class A purposes, their final recommendations are inter- agency memoranda; and, if they are not agencies separate from the Board, their recommendations are intra- agency memoranda. In either event, the Regional Boards' total lack of decisional authority brings their reports within Exemption 5 and prevents them from being "final opinions."

n25 We note in passing that, while the conclusion of the court below that the Regional Board's status as an agency stemmed from its power to issue "orders" in Class B cases finds support in the cases, *International Paper Co. v. FPC*, 438 F.2d 1349, 1359-1359 (CA2), cert. denied, 404 U.S. 827 (1971); *Washington Research Project, Inc. v. Department of HEW*, 164 U.S. App. D.C. 169, 504 F. 2d 238 (1974), cert. pending, No. 74-736, the Court of Appeals never considered the possibility that the Regional Board might be an agency for Class B purposes and not for Class A purposes.

[\*189] B. Division Reports

[\*\*\*LEdHR2B] [2B] It is equally clear that a division of the Board has no legal authority to decide. Once again, it may analyze and recommend, but the power to decide remains with the full Board. The evidence is uncontradicted that the Division Reports were prepared before the Board reached its decision, were used by the

full Board as a basis for discussion, and, as the Chairman testified, were "prepared for and designed to assist the members of the Board in their deliberations"; nor is the discussion limited to the material and analysis contained in the Division Report. Following the discussion, any Board member may disagree with the report's conclusion or agree with it for reasons other than those contained [\*\*\*74] in the report. Indeed, as Chairman Hartwig testified, it is [\*\*1503] likely that this will occur because of the highly judgmental nature of the Board's decisions given the number and generality of the statutory criteria. In any event, the reasoning of the Division Report is never adopted - though its conclusion may be - and no effort is made to reach agreement on anything but the result.

[\*\*\*LEdHR6A] [6A] It is true that those who participate in the writing of the Division Report are among those who participate in the Board's decision, and that, human nature being what it is, they may not change their minds after discussion by the full Board. This creates a greater likelihood that the Board's decision will be in accordance with the Division Report than is the case with respect to a Regional Board Report and that, where the Board's decision is different, the Division Report will reflect the final views of at least one of the Board's members. See *NLRB v. Sears, Roebuck & Co.*, ante, at 158-159, n. 25. However, this is not necessarily so. The Board obviously considers its discussion following the creation of the Division Report to be of crucial importance to its decision for, notwithstanding [\*190] the fact that a division is made up of a majority of the Board, it has been delegated no decisional authority. The member of the Board who wrote the report may change his mind as a result of the discussion or, consistent with the philosophy of Exemption 5, he may have included thoughts in the report with which he was not in agreement at the time he wrote it. The point is that the report is created for the purpose of discussion, and we are unwilling to deprive the Board of a thoroughly uninhibited version of this valuable deliberative tool by making Division Reports public on the unsupported assumption that they always disclose the final views of at least some members of the Board. n26

[\*\*\*LEdHR6B] [6B]

n26 Since all of the members of the division are free to change their minds after deliberation

and are free to place thoughts or arguments in the Division Reports which were only tentative in the first place, we need not reach the question whether a concurring or dissenting opinion must be disclosed even where no opinion expressing the view of the agency is written.

Respondent argues that Division Reports, as well as concurrences or dissents thereto, constitute "final opinions" of the Board or individual members of the Board, relying on a specific reference, assertedly made to such documents, in the House Report which accompanied the Act, H.R. Rep. No. 1497, 89th Cong., 2d Sess. (1966). That report, in speaking to the Committee's understanding of what is now codified as 5 U.S.C. § 552(a)(2)(A), stated:

"[Subsection (A)] requires concurring and dissenting opinions to be made available for public inspection. The present law, requiring most final opinions and orders to be made public, implies that dissents and concurrences need not be disclosed. As a result of a Government Information Subcommittee investigation a number of years ago, two major regulatory agencies agreed to make public the dissenting opinions of their members, but a recent survey indicated that five agencies - including... the Renegotiation Board - do not make public the minority views of their members." H.R. Rep. No. 1497, supra, at 8.

This statement from the legislative history of the Act supports the proposition that Congress intended the Board to be subject to the Act's provisions, *Renegotiation Board v. Bannerkraft Clothing Co.*, 415 U.S., at 16, and at first blush lends support to respondent's contention that Congress assumed, in passing the Act, that the Board was issuing "final opinions" in cases, that the Board was withholding concurrences and dissents to those final opinions, and that § 552(a)(2)(A) was designed to put an end to this practice. Our research convinces us, however, that this language from the House Report is not to be so read. The "survey" referred to in the report was conducted in 1963 by the Foreign Operations and Government Information Subcommittee of the Committee on Government Operations of the

421 U.S. 168, \*190; 95 S. Ct. 1491, \*\*1503;  
44 L. Ed. 2d 57, \*\*\*LEdHR6B; 1975 U.S. LEXIS 119

House. The unpublished data gathered during that survey indicate that, in response to three questions submitted by the subcommittee to the Board, concerning its practices with respect to opinion writing and publication, the Board stated:

"Except as authorized in Renegotiation Board Regulations 1480.4 (a) (attached), opinions and orders of the Renegotiation Board are not published or made available to the public (see RBR [32 C.F.R. § ] 1480.8)...."

As our prior discussion of 32 CFR § 1480.8, n. 15, supra, makes clear, the "opinions" to which the Board referred were Statements and Summaries. Thus, the reference to concurring and dissenting opinions in the House Report, with respect to the Renegotiation Board, was not to Division Reports but was to nonexistent concurrences to and dissents from Statements and Summaries which were already being made public.

[\*191]

[\*\*\*LEdHR7] [7] [\*\*\*LEdHR8] [8] [\*\*\*LEdHR9] [9]The [\*\*\*75] [\*\*1504] effect of this decision is that, in those cases in which Statements and Summaries were not issued, the public will be largely uninformed as to the basis for decisions by the Renegotiation Board. Indeed, the decisions of both courts below - conceding as they both did the absence of decisional authority in either the Regional Boards or divisions of the statutory board - appear to have rested in the final analysis on the notion that the Renegotiation Board has an affirmative obligation under the Act to make public the reasons for its decisions; and that it must disclose its opinion or the nearest thing to an opinion in every case. However, Congress explicitly exempted the Renegotiation Board from all provisions of [\*192] the Administrative Procedure Act except for the Public Information Section. 50 U.S.C. App. § 1221. Thus the opinion-writing section of the APA, 5 U.S.C. § 557 - which itself applies only to "adjudication required by statute to be determined on the record after opportunity for an agency hearing" and even then only if the agency decision is not subject to de novo court review, 5 U.S.C. § 554 - is inapplicable to Board decisions. The Freedom of Information Act imposes no independent obligation on agencies to write opinions. It

simply requires them to disclose the opinions which they do write. NLRB v. Sears, Roebuck & Co., ante, p. 132. If the public interest suffers by reason of the failure of the Board to explain some of its decisions, the remedy is for Congress to require it to do so. It is not for us to require disclosure of documents, under the purported authority of the Act, which are not final opinions, which do not accurately set forth the reasons for the Board's decisions, and the disclosure of which would impinge on the Board's predecisional processes.

The judgment of the Court of Appeals is

Reversed.

Mr. JUSTICE DOUGLAS dissents.

Mr. JUSTICE POWELL took no part in the consideration or decision of this case.

**REFERENCES:** Return To Full Text Opinion

65 Am Jur 2d, Public Works and Contracts 141; 66 Am Jur 2d, Records and Recording Laws 32-46

24 Am Jur Pl & Pr Forms (Rev ed), War, Form 4

2 Am Jur Trials 409, Locating Public Records; 14 Am Jur - Trials 437, Representing the Government Contractor

5 USCS 552

US L Ed Digest, Administrative Law 64; War 15.3

ALR Digests, Administrative Law 53; United States 5

L Ed Index to Annos, Freedom of Information Act; United States

ALR Quick Index, Freedom of Information Acts; Public Works and Contracts; Renegotiation

Federal Quick Index, Freedom of Information Acts; Public Works and Contracts; Renegotiation Act

Annotation References:

Construction and application of Federal Administrative Procedure Act. 94 L Ed 631, 95 L Ed 473, 97 L Ed 884.

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421 U.S. 168, \*192; 95 S. Ct. 1491, \*\*1504;  
44 L. Ed. 2d 57, \*\*\*75; 1975 U.S. LEXIS 119

Governmental privilege against disclosure of official information. 95 L Ed 425, 97 L Ed 735.

What constitutes "final opinion" or "order" of federal administrative agency required to be made available for public inspection within meaning of Freedom of Information Act (5 USCS 552(a)(2)(A)). 20 ALR Fed 400.

Scope of judicial review under Freedom of

Information Act (5 USCS 552(a)(3)), of administrative agency's withholding of records. 7 ALR Fed 876.

What are inter-agency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 USCS 552(b)(5)). 7 ALR Fed 855.

Renegotiation of war contracts. 153 ALR 1455, 158 ALR 1490.



2 of 17 DOCUMENTS



Analysis

As of: Apr 05, 2007

**SHERMCO INDUSTRIES, INC. and Peter A. Sherman, Plaintiffs-Appellees, v.  
SECRETARY OF the AIR FORCE, Defendant-Appellant.**

No. 78-2499

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

*613 F.2d 1314; 1980 U.S. App. LEXIS 19498; 27 Cont. Cas. Fed. (CCH) P80,280*

March 19, 1980

**PRIOR HISTORY:** [\*\*1]

Appeal from the United States District Court for the Northern District of Texas.

**COUNSEL:**

Alice Mattice, Leonard Schaitman, Dept. of Justice, Appellate Section, Washington, D. C., for defendant-appellant.

Wesner & Wyler, C. Thomas Wesner, Jr., Dallas, Tex., for plaintiffs-appellees.

**JUDGES:**

Before BROWN, TJOFLAT and GARZA, Circuit Judges.

**OPINION BY:**

BROWN

**OPINION:**

[\*1315]

After its bid for a contract to overhaul airborne generators was rejected by the Air Force, Appellee Shermco Industries, Inc. (Shermco) filed a protest with

the General Accounting Office (GAO) and requested from the Air Force the production of several documents in connection with this protest. [\*1316] The Air Force produced all but seven of these documents and Shermco sued for their disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (1977) (FOIA). The District Court ordered the production of the documents, holding that the exemptions of 5 U.S.C. §§ 552(b)(4) and (5) were inapplicable. n1 We reverse.

n1. *Shermco Industries, Inc. v. Secretary of the Air Force*, 452 F. Supp. 306 (N.D.Tex.1978).

## I. Factual [\*\*2] Background

In 1976, Shermco had a five-year contract with the Air Force to overhaul airborne generators at McClellan Air Force Base near Sacramento, California. The Air Force terminated the contract in its third year, citing "quality problems," and solicited offers from a number of contractors, including Shermco, to continue the work. On October 14, 1976, Shermco was informed that Tayko Industries, Inc. (Tayko) was the lowest acceptable bidder and that Shermco's bid was rejected. On October 22, 1976, Shermco filed a protest with the GAO pursuant to 4 CFR Part 20 (1979). Shermco and its president made several requests to the Air Force for information

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concerning Tayko's bid to help Shermco implement its protest. These requests included ones made under FOIA and the Privacy Act. n2 The Air Force produced twenty-four of the requested items but withheld seven others three legal memoranda which had been attached to the Air Force's response to the protest, the contracting officer's recommendation prepared in connection with the protest, n3 and three documents containing Tayko's basic pricing information, including "items, quantities and unit prices." On November 10, 1977, Shermco filed suit [\*\*3] against the Secretary of the Air Force to obtain these documents, pursuant to FOIA and the Privacy Act.

n2. 5 U.S.C. § 552a (1977).

n3. Since the Air Force has decided to release the contracting officer's recommendation, the disclosure of this document is not at issue on this appeal.

The District Court held that FOIA required the disclosure of all seven documents requested. The Secretary appeals this holding and we reverse. n4

n4. At oral argument, this Court learned that in December, 1978, the GAO denied Shermco's protest. At first glance it seems that this would give the Air Force the right to make a final award of the contract to Tayko and moot the central issue of this appeal, whether or not the Air Force's decision is final. However, Shermco can request reconsideration of the decision by the GAO. 4 CFR § 20.9 (1979). Moreover, Congress has amended the Small Business Administration Act to give the SBA the power to determine the competency of a small business to perform a government procurement contract. This Certificate of Competency, once awarded, is deemed conclusive proof of the small business' abilities, and the contract must be awarded to it. Pub.L. 95-89, Title V, § 501, Aug. 4, 1977, 91 Stat. 561; 15 U.S.C. § 637(b)(7) (West Supp.1979). See House Conference Report 95-535, 1977 U.S.Code Cong. & Admin.News vol. 2 at 821, 851-52. The current status of the proceedings in this case is that the Air Force has not yet awarded the contract to Tayko but is doing the work internally. Thus, there has not yet been a

final decision, and since the Appellee still has remedies it can seek from the GAO and the SBA, this appeal is not moot.

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## II. The Cost Proposals And Exemption 4

The Air Force's basis for the withholding of Tayko's cost proposals was Exemption 4 of FOIA, 5 U.S.C. § 552(b)(4), which provides that the Government is not required to disclose

trade secrets and commercial or financial information obtained from a person and privileged or confidential . . . .

The Air Force argued that because there had not been a final award of the contract, this information should remain confidential until a final award was made. To disclose this information before a final decision was made would make it more difficult for the Air Force to make its final decision and would be prejudicial to the low bidder, undermining his competitive advantage.

[\*1317] The District Court conceded that the decision was not yet technically final (452 F. Supp. at 322) and that, if there were no final award, Exemption 4 would apply ( *Id.* at 324). However, the Court found that, for purposes of FOIA, the decision was final ( *Id.* at 322), and that "(a)ny need for secrecy (was) no longer present because the award (would) be made either to the successful bidder or the protester . . . ." *Id.* at 324. Therefore, the Court concluded, the [\*\*5] cost proposals were no longer confidential nor exempt.

The purpose of Exemption 4 is twofold to protect the interests of individuals who disclose confidential information to government agencies and to protect the *Government as well. National Parks and Conservation Association v. Morton*, 162 U.S.App.D.C. 223, 228, 498 F.2d 765, 770 (D.C. Cir. 1974). n5 This information concerning Tayko's cost proposals, in the hands of a competitor prior to the time of a final award, would jeopardize the Air Force's ability to discern clearly which bidder could do the best job for the lowest price. Moreover, the nondisclosure of this information is in keeping with the Armed Services Procurement Regulations (ASPR) policy prohibiting bidding with knowledge of competing bids. n6 Nondisclosure prior to final award also encourages competing bidders to enter

bids which accurately reflect their capabilities and their costs; this secrecy protects the bargaining power of each competitor's bid. Absent the assurance of this confidentiality, bidders might be reluctant to disclose such information to the procuring government agency.

n5. In *Federal Open Market Committee of the Federal Reserve System v. Merrill*, 443 U.S. 340, 355-360 99 S. Ct. 2800, 2810-2812, 61 L. Ed. 2d 587, 601-03 (1979), the need for nondisclosure of information received by an agency concerning the award of a contract, prior to the award of that contract, is acknowledged and discussed in the context of Exemption 5, the exemption for certain intra- and inter-agency memoranda (discussed *Infra* at 1318-1319. Further discussion of the *Merrill* opinion is at note 11, *Infra*. We believe the need for secrecy of commercial information prior to the award of a contract is equally, if not more important in the context of Exemption 4, where the information is derived from a private party, rather than a government agency.

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n6. ASPR 3-805.3(b) & (c); 32 CFR 3.805.3(b) & (c) (1976):

3-805.3 Discussions With Offerors.

(b) Discussions shall not disclose the strengths or weaknesses of competing offerors, or disclose any information from an offeror's proposal which would enable another offeror to improve his proposal as a result thereof.

(c) Auction techniques are strictly prohibited; an example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high.

On appeal, the Air Force reasserts the same argument that their selection of Tayko as the lowest acceptable bidder did not amount to a final award. To support this

contention it cites GAO briefing papers stating that the effect of a GAO ruling in favor of a protestor in a pre-award protest is not necessarily that he will be awarded the contract. It may mean the contract bidding will be reopened to choose the next lowest responsible bidder. [\*\*7] Therefore, the reasons for withholding the cost proposals pursuant to Exemption 4 still exist.

We feel that the District Court misunderstood the bid protest procedure when it characterized the award as a final decision. The October 14th notice to Shermco was of a proposed award to Tayko; it was not a final decision. The District Court's statement that there was no need for secrecy because the award would be made either to Tayko or to Shermco is contrary to GAO protest procedure. It is amply clear from the record and from oral argument that there is a possibility that if the protest were to succeed either before the GAO, the SBA or some other forum, the bidding could be reopened. Thus, the Tayko pricing information [\*1318] is covered by Exemption 4 and should not have been disclosed. n7

n7. Recently, in *Audio Technical Services, Ltd. v. Department of Army*, C.A. 487 F. Supp. 779 (1979), the Federal District Court of the District of Columbia specifically rejected the position of the Northern District of Texas in *Shermco* and held that bid proposals of a successful bidder for a government contract, sought by an unsuccessful bidder in conjunction with a GAO protest, fell within Exemption 4. Interestingly, the District of Columbia Court so held, even though it characterized the award of the contract as final. Instead, the Court relied solely on the policy considerations, holding *Sub silentio* that the need for secrecy remains even after a final award.

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### III. The Legal Memoranda And Exemption 5

The refusal of the Air Force to disclose three legal memoranda attached to its response to Shermco's protest was based on Exemption 5 of FOIA, 5 U.S.C. § 552(b)(5):

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than

an agency in litigation with the agency . . . )

The District Court found the Air Force memoranda to be "legal opinions prepared to assist the contracting officer in making his decision awarding the overhauling contract," which would not normally have been releasable because of this exemption. 452 F. Supp. at 322. However, since, according to the District Court, the Air Force award of the contract to Tayko was a final decision, these intra-agency memoranda in defense of the bid protest became part of that decision and were releasable under *NLRB v. Sears-Roebuck & Co.*, 421 U.S. 132, 95 S. Ct. 1504, 44 L. Ed. 2d 29 (1975). Moreover, it was the District Court's opinion that by sending these memoranda to the GAO, the Air Force had waived its rights to assert the confidentiality of these otherwise internal staff opinions. 452 F. Supp. at 322. These memoranda [\*9] had become part of the Air Force's "official position" against the protest by Shermco. For both reasons, these documents were deemed releasable.

#### A. The Executive Privilege For Communications Relating To Governmental Deliberations

Exemption 5 incorporates at least two n8 types of privileges traditionally available to the Government in civil litigation (i) the attorney-client and attorney work-product privileges n9 and (ii) the executive privilege for information relating to governmental deliberations. *NLRB v. Sears Roebuck & Co.*, supra, 421 U.S. at 149-54; 95 S. Ct. at 1515-1518, 44 L. Ed. 2d at 46-49.

n8. A very recent Supreme Court decision, *Federal Open Market Committee v. Merrill*, supra, holds that Exemption 5 also incorporates a qualified privilege for confidential commercial information, modeled along the lines of *F.R.Civ.P. 26(c)(7)*. This exemption is discussed in more detail *Infra* at note 11.

n9. Because we hold that the Air Force's legal memoranda come under the executive privilege of Exemption 5, we need not consider Appellants' alternative argument that these memoranda are also exempt as attorney work-products.

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The executive privilege grew out of a need to protect the governmental decision-making process by assuring those persons, both inside and outside the decision-making agency, who offer information and opinions to the Government that their communications will be kept in confidence. *NLRB v. Sears*, supra, 421 U.S. at 151-52, 95 S. Ct. 1516-1517, 44 L. Ed. 2d 47-48. See *Mead Data Central, Inc. v. United States Department of Air Force*, 184 U.S. App. D.C. 350, 225-226, n. 28, 566 F.2d 242, 254-55, n. 28 (D.C. Cir. 1977). For this reason, the Supreme Court has distinguished between pre-decisional communications which are exempt from disclosure and post-decisional communications which are not. *NLRB v. Sears*, 421 U.S. at 152-53, 95 S. Ct. at 1517, 44 L. Ed. 2d at 48-49; *Renegotiation Board v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 184, 95 S. Ct. 1491, 1500; 44 L. Ed. 2d 57, 71 (1975). See *Audio Technical Service v. Army*, supra. Disclosure of pre-decisional communications presents more [\*1319] danger that governmental sources of information and advice will be inhibited. Besides, there is less public concern for this information, whereas the public is vitally interested in learning [\*11] an agency's reasons for a final decision which has the effect of law. *NLRB v. Sears*, supra, 421 U.S. at 151-52, 95 S. Ct. at 1516-1517, 44 L. Ed. 2d at 47-48.

In *Sears*, the Supreme Court emphasized that this distinction is supported by FOIA itself 5 U.S.C. § 552(a)(2)(A) n10 which requires the disclosure of all final agency opinions. 421 U.S. at 153, 95 S. Ct. at 1517, 44 L. Ed. 2d at 49. Thus, the Supreme Court concluded that if an advisory opinion of an agency staff member is expressly incorporated into a final agency decision, the policy considerations supporting the nondisclosure of this type of pre-decisional communication are no longer operable. Once the agency adopts its employee's advice as its own, the agency will defend its employee and he need no longer be concerned with adverse consequences if his communication becomes a matter of public record. Moreover, his advice, as part of a final agency opinion, has now become a matter of more profound public interest. 421 U.S. at 161, 95 U.S. at 1521, 44 L. Ed. 2d at 53. Thus, in effect, what was once a pre-decisional communication becomes post-decisional and is no longer exempt from disclosure under Exemption 5.

n10. S 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

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*Grumman, supra*, 421 U.S. at 184, 95 S. Ct. at 1500, 44 L. Ed. 2d at 71, lists the criteria for identifying a post-decisional communication: (i) The decision must, of course, be final. (ii) The agency of which the information is demanded must possess the power to make the final decision into which the pre-decisional information is incorporated. (iii) Finally, the information must be adopted as part of the agency's reasoning for its decision. Because the Grumman decision relied on Sears, its companion case, we believe these criteria also should apply to the Sears hybrid, the pre-decisional communication turned post-decisional. With respect to the third criterion, Sears goes even further than Grumman and holds that the hybrid, to become a post-decisional communication, must be "expressly adopt(ed) or incorporate(d) by reference" into the final opinion. 421 U.S. at 161, 95 S. Ct. at 1521-1522, 44 L. Ed. 2d at 53.

In holding that the three legal memoranda submitted to the GAO by the Air Force did not fall within Exemption 5, the District Court followed Sears but then held that these once pre-decisional memoranda, by being submitted to the GAO in connection with the Shermco protest, were [\*\*13] incorporated into the Air Force's final decision to award the contract to Tayko, and therefore had become post-decisional.

In the leap from Sears to this case we find this conclusion unacceptable for two reasons. First, as we stated earlier in this opinion, the proposed award of the contract to Tayko was not the final opinion of the Air Force. n11 Because the decision was not yet final, all the considerations [\*1320] which support the nondisclosure of pre-decisional communications were still in effect, as was Exemption 5. Second, even if it were a final decision, these memoranda were not expressly incorporated by reference into the opinion. They had been used by the Air Force internally in reaching their

initial conclusion that Tayko was the lowest bidder, and they were produced to the GAO in aid of their defense against Shermco's protest, but they were never attached to any formal written decision by the Air Force.

n11. Shermco cites *Federal Open Market Committee v. Merrill, supra*, "for the proposition that as soon as the Government awards a contract, any protection under Exemption 5 for any information generated in the process leading up to the award of the contract expires."

The specific holding of the Supreme Court in Merrill was "that Exemption 5 incorporates a qualified privilege for confidential commercial information, at least to the extent that this information is generated by the Government itself in the process leading up to awarding a contract." 443 U.S. at 360, 99 S. Ct. at 2812, 61 L. Ed. 2d at 603. This newly created but qualified exception is in addition to the two traditional Exemption 5 privileges for attorney work-products and executive deliberations. We do not believe this new category of Exemption 5 information includes legal memoranda prepared by an agency to aid in its deliberations at issue in this case. We find two passages in Merrill to support this conclusion.

First, the Supreme Court found support for the creation of this privilege in *F.R.Civ.P. 26(c)(7)*. This procedural rule permits a District Court to issue a protective order so "that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way." The analogous privilege under Exemption 5 was created by the Supreme Court only for confidential commercial information, and did not mention confidential research, a category in which we believe legal memoranda more readily fall. We decline to read "Exemption 5 confidential commercial information" so broadly as to include every type of information which could be protected under Rule 26(c)(7) because the Merrill opinion expressly states "that Exemption 5 was (not) intended to incorporate every privilege known to civil discovery." 443 U.S. at 360, 99 S. Ct. at 2809, 61 L. Ed. 2d at 599.

613 F.2d 1314, \*1320; 1980 U.S. App. LEXIS 19498, \*\*13;  
27 Cont. Cas. Fed. (CCH) P80,280

Second, the Supreme Court distinguishes between pre-decisional deliberations (and we have already held that the legal memoranda in the case before us are pre-decisional) and confidential commercial information which there is no need to protect after a contract is awarded. *443 U.S. at 360, 99 S. Ct. at 2812, 61 L. Ed. 2d at 603*. To us this is another indication that pre-decisional deliberations and confidential commercial information are not the same thing.

The language in the Merrill opinion on which Shermco relies in support of its proposition that the right to invoke Exemption 5 disappears as soon as a contract is awarded is as follows:

The theory behind a privilege for confidential commercial information generated in the process of awarding a contract, however, is not that the flow of advice may be hampered, but that the Government will be placed at a competitive disadvantage or that the consummation of the contract may be endangered. Consequently, the rationale for protecting such information expires as soon as the contract is awarded or the offer withdrawn.

*443 U.S. at 360, 99 S. Ct. at 2812, 61 L. Ed. 2d at 603.*

Not only are the legal memoranda at issue in this case not confidential commercial information, but we do not believe the Supreme Court, when it made the above statement, was necessarily creating a rule which applies to all communications exempt under § 552(b)(5). Moreover, we do not believe the Supreme Court was attempting to define a final decision as equivalent to the award of a contract or pinpoint when the final award of a contract technically is made. The finality of an agency decision was not even at issue in Merrill. For all of the reasons we state above, we do not think the Merrill case is applicable here.

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B. Waiver Of Exemption 5 Through Disclosure To

GAO

The District Court also held that, by disclosing these

memoranda to the GAO, the Air Force waived its rights to claim Exemption 5. We will begin by stating that the mere fact that one federal agency releases intra-agency communications to another federal agency cannot by itself imply the waiver of Exemption 5, which explicitly applies to inter-agency, as well as intra-agency, memoranda.

Waiver occurs when an agency makes its information more broadcast than is allowed by its own regulations, *Cooper v. Department of Navy, 594 F.2d 484 (5th Cir. 1979)*, but it does not occur when an agency whose action is being reviewed forwards to the reviewing agency legal memoranda in support of its position:

By including Inter-Agency memoranda in Exemption 5, Congress plainly intended to permit one agency possessing decisional authority to obtain written recommendations and advice from a separate agency not possessing such decisional authority without requiring that the advice be any more disclosable than similar advice received from within the agency.

*Grumman, supra, 421 U.S. at 188, 95 S. Ct. at 1502, 44 L. Ed. 2d at 73.* In reviewing [\*\*15] the Air Force's preliminary decision to award this contract to Tayko, the GAO needed and [\*1321] was entitled to the legal and technical advice of both parties. The Air Force should be allowed to supply this information without running the risk of waiving Exemption 5. The forwarding of these memoranda to the GAO was not a broadcast disclosure by the Air Force. It was no more than the submission of the agency's legal opinion in defense of a bid protest. There was thus no waiver of Exemption 5.

In sum, we hold that the Air Force's notice to Shermco was a proposed, and not a final, award of the contract to Tayko. There is a possibility that, if the GAO or its successor under the new law, the SBA, upholds the protest, that bidding will be reopened. All the policy reasons for exempting from disclosure both the Tayko cost proposals and the legal memoranda of the Air Force still operate to make this information immune from disclosure within the language of Exemptions 4 and 5. n12 Accordingly, we reverse the judgment of the District Court and remand this cause with orders to enter judgment in favor of the Appellant Air Force.

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613 F.2d 1314, \*1321; 1980 U.S. App. LEXIS 19498, \*\*15;  
27 Cont. Cas. Fed. (CCH) P80,280

n12. The Air Force also has sought review of the District Court's award of attorney's fees to Shermco under 5 U.S.C. § 552(a)(4)(E). Because we reverse on all of the substantive claims of this appeal, Shermco has no longer "substantially prevailed" in this action, and the award of

attorney's fees is also reversed.

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REVERSED and REMANDED.

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Caution

As of: Apr 05, 2007

**JOHN J. TIGUE, JR., MORVILLIO, ABRAMOWITZ, GRAND, IASON & SILBERBERG, P.C., Plaintiffs-Appellants, v. UNITED STATES DEPARTMENT OF JUSTICE, INTERNAL REVENUE SERVICE, Defendants-Appellees.**

**Docket No. 01-6243**

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

*312 F.3d 70; 2002 U.S. App. LEXIS 23672; 90 A.F.T.R.2d (RIA) 7320; 59 Fed. R. Serv. 3d (Callaghan) 1285*

**July 15, 2002, Argued  
November 15, 2002, Decided**

**SUBSEQUENT HISTORY:** US Supreme Court certiorari denied by *Tigue v. Dep't of Justice*, 2003 U.S. LEXIS 4077 (U.S., May 27, 2003)

(James Comey, United States Attorney for the Southern District of New York, Gideon A. Schor, Assistant United States Attorney, on the brief) for Defendants-Appellees.

**PRIOR HISTORY: [\*\*1]**

Appeal from orders of the United States District Court for the Southern District of New York (Hellerstein, J.) granting defendants' motion for summary judgment and denying plaintiffs' cross-motion for summary judgment under the Freedom of Information Act, 5 U.S.C. § 552.

**JUDGES:**

Before: CABRANES, SOTOMAYOR, Circuit Judges, and GLEESON, \* District Judge.

\* The Honorable John Gleeson, United States District Judge for the Eastern District of New York, sitting by designation.

**DISPOSITION:**

Affirmed.

**OPINION BY:**

SOTOMAYOR

**COUNSEL:**

JOHN J. TIGUE, JR., Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., New York, NY (Daniel B. Kosove, on the brief) for Plaintiffs-Appellants.

DANIEL S. ALTER, Assistant United States Attorney,

**OPINION: [\*73] SOTOMAYOR, Circuit Judge:**

This appeal was brought by a lawyer and his law firm seeking access under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b), to a memorandum ("the Neiman Memorandum" or "Memorandum") prepared by



an assistant [\*\*2] United States Attorney in the Southern District of New York ("Southern District") and sent to a public commission. The Neiman Memorandum outlines the Southern District's opinions and recommendations as to how the Internal Revenue Service ("IRS") should conduct criminal tax investigations. The Memorandum was written for, and forwarded to, the Criminal Investigation Division Review Task Force headed by Judge William Webster ("the Webster Commission"), which was established by the IRS to gather information and make suggestions on how to reform its Criminal Investigations Department ("CID"). The district court held that the government did not have to produce the Neiman Memorandum because it was shielded by the FOIA's exemption for documents reflecting an agency's deliberative processes, relying on 5 U.S.C. § 552(b)(5).

On appeal, plaintiffs claim that the Neiman Memorandum was not an intra- or inter-agency document as required for exemption under § 552(b)(5) because it was provided to the Webster Commission, an independent task force that intended to issue a public report of its findings, and that it is not privileged as material of an agency consultant. Plaintiffs [\*\*3] also contend that the Neiman Memorandum is not "predecisional" because it was prepared to assist the Webster Commission rather than the IRS and does not relate to a sufficiently specific agency decision. They further argue that even if the deliberative process exemption applies, the government waived that protection by reproducing a quotation from the memorandum in the report published by the Webster Commission ("Webster Report" or "Report"). Finally, they argue that if the document is protected, any purely factual sections should be made [\*74] available. We disagree. We hold that (1) the Webster Commission was a consultant to the IRS that was charged with assisting the agency in developing its policy, rendering a memorandum sent from the Southern District to the Webster Commission an inter-agency document; (2) because the IRS created the Webster Commission in order to help it decide whether and how to reform the CID, the document is predecisional; (3) because the Webster Commission's Report was not a final decision, the government did not waive executive privilege; and (4) after *in camera* review, the district court properly found that there were no reasonably segregable parts of the [\*\*4] Neiman Memorandum subject to disclosure.

#### BACKGROUND

During his confirmation hearings before the Senate in the fall of 1997, IRS Commissioner Charles Rossotti made a commitment to improving the quality of service provided by each of the major components of the agency. To that end, in July 1998, Rossotti asked Judge William Webster, former director of both the FBI and the CIA, to establish a task force to conduct an "independent review" of the IRS's CID to "determine [CID's] effectiveness in accomplishing its mission, and make recommendations for improvement." Judge Webster recruited a number of experts with extensive experience in criminal investigations, law enforcement and federal prosecution to serve on the Webster Commission.

The Webster Commission spent nine months reviewing "countless" documents and interviewing over 600 people, including a number of law enforcement officials. The Webster Commission specifically requested the opinions of the Southern District because it handled more tax investigations than any other district. Then-Deputy U.S. Attorney Shirah Neiman wrote a sixteen-page memorandum expressing the views of the Southern District on "the various agency components [\*\*5] involved in criminal tax enforcement; ... the then existing focus of tax investigations and prosecutions and the deployment of IRS resources; ... the difference[s] between [the Southern District's] position on various issues and that of other agency components; ... and [the Southern District's] recommendations to ensure the continuation of vigorous criminal tax enforcement." According to Neiman, the Neiman Memorandum expressed the views of the Southern District and not those of the Department of Justice as a whole or Neiman as an individual, and her expectation that the memorandum would remain confidential contributed to her willingness to express the Southern District's opinions and policies about tax investigations.

The Webster Commission released its Report on April 9, 1999 to significant media attention. The 113-page Report includes both a factual inquiry into the practices of the CID and a set of recommendations about how the CID should be improved. Included in the Report is a letter from Commissioner Rossotti stating that the Report "will guide us to improve the work of this critically important component of tax administration for many years to come" and that the IRS concurred [\*\*6] with the specific recommendations in the Report, although noting that "some of the recommendations, particularly those concerning organization structure, need

further analysis and design work in coordination with our other organizational changes.

The Neiman Memorandum is mentioned twice in the Report. First, the Neiman Memorandum is referenced in a footnote as representing an opposing view to the position held by the leadership of the Department [\*75] of Justice Criminal Division, most United States Attorneys, and other important figures in criminal enforcement, all of whom apparently believe that the CID should continue to investigate money laundering and narcotics cases. Later in the Report, it is quoted as criticizing the use of administrative investigations and IRS summons because they are slower than grand jury subpoenas: "service of an administrative summons simply does not convey the urgency of a grand jury subpoena, and is not as readily enforceable as a subpoena, and represented subjects of administrative investigations often succeed in dragging out these investigations for unimaginably long periods."

Plaintiff John Tigue, an attorney whose law firm, Morvillo, Abramowitz, Grand, [\*\*7] Iason & Silberberg, P.C., often represents individuals in connection with federal grand jury tax investigations and IRS administrative investigations, enforcement actions, and prosecutions, obtained a copy of the Report and noticed the reference to the Neiman Memorandum. Believing that review of the Neiman Memorandum would improve his understanding of Southern District policy and thus allow him to represent his clients better, Tigue and his law firm ("plaintiffs") submitted a FOIA request for the Neiman Memorandum on August 18, 1999. Following a period of delay in which the Department of Justice ("DOJ") and the IRS attempted to discern which agency should respond to the FOIA request, the DOJ denied the application on April 28, 2000, and, on September 28, 2000, denied the appeal, citing 5 U.S.C. § 552(b)(5), which protects the so-called "deliberative process privilege."

On February 14, 2001, plaintiffs filed suit against the IRS and the DOJ in the United States District Court for the Southern District of New York. The parties cross-moved for summary judgment. Following oral argument on October 23, 2001, Judge Hellerstein ruled that the Neiman Memorandum met [\*\*8] the requirements of § 552(b)(5) and was therefore exempt from production under the FOIA, and that the government had not waived the privilege by citing to and quoting from the Neiman Memorandum in the published

Report. At that time the court also requested that the government review the Neiman Memorandum to determine whether any sections of the document could be produced as purely factual. On October 29, 2001, after in camera review of a marked copy of the Neiman Memorandum, the district court issued an order finding that the Memorandum was "predominantly evaluative, evaluating both policies and procedures of the United States Attorney for the Southern District of New York in criminal investigations involving tax matters and those of the Internal Revenue Service, and recommending procedures for the Internal Revenue Service." The district court also found that "there is no factual material in the report that is not inextricably intertwined with evaluations, and recommendations of policy" and thus denied plaintiffs' alternative request for partial production of the Neiman Memorandum.

Plaintiffs appeal both the October 23, 2001 and October 29, 2001 rulings.

#### DISCUSSION

This Court [\*\*9] reviews *de novo* a district court's grant of summary judgment in FOIA litigation. *Halpern v. FBI*, 181 F.3d 279, 288 (2d Cir. 1999). This Court also reviews *de novo* a district court's decisions whether to require partial production of documents following *in camera* review, in keeping with the spirit and the text of the FOIA and its presumption in favor of disclosure. *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 478 n.2 (2d Cir. 1999).

[\*76] The FOIA, 5 U.S.C. § 552, was enacted to ensure public access to information created by the government in order "to hold the governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242, 57 L. Ed. 2d 159, 98 S. Ct. 2311 (1978). Thus, "upon request, FOIA mandates disclosure of records held by a federal agency unless the documents fall within enumerated exemptions." *Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 7, 149 L. Ed. 2d 87, 121 S. Ct. 1060 (2001) (internal citations omitted). The Supreme Court has counseled that these exceptions are to be interpreted narrowly in the face of the overriding [\*\*10] legislative intention to make records public. *See id.* at 7-8.

At issue here is FOIA Exemption 5, which protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by

law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). "Stated simply, agency documents which would not be obtainable by a private litigant in an action against the agency under normal discovery rules (e.g., attorney-client, work-product, executive privilege) are protected from disclosure under Exemption 5." n1 *Grand Cent. P'ship*, 166 F.3d 473 at 481 (internal quotation marks and citation omitted).

n1 "This discovery standard can only serve as a rough guide to the courts, since decisions as to discovery are usually based on a balancing of the relative need of the parties, and standards vary according to the kind of litigation involved. Furthermore, the most fundamental discovery and evidentiary principle, relevance to the issues being litigated, plays no part in FOIA cases. *Coastal States Gas Corp. v. Dep't of Energy*, 199 U.S. App. D.C. 272, 617 F.2d 854, 862 (D.C. Cir. 1980) (internal citations and quotation marks omitted); accord *EPA v. Mink*, 410 U.S. 73, 86, 35 L. Ed. 2d 119, 93 S. Ct. 827 (1973).

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Specifically, the government claims that the deliberative process privilege, a sub species of work-product privilege that "covers 'documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated,'" *Klamath*, 532 U.S. at 8 (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150, 44 L. Ed. 2d 29, 95 S. Ct. 1504 (1975)), permits withholding of the Neiman Memorandum. The rationale behind this privilege is "the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance 'the quality of agency decisions,' by protecting open and frank discussion among those who make them within the Government." 532 U.S. 1 at 8-9 (quoting *Sears*, 421 U.S. at 151); accord *Coastal States*, 617 F.2d at 866 ("The [deliberative process] privilege has a number of purposes: it serves to assure that subordinates within an agency will feel free to provide the decisionmaker with their uninhibited opinions and recommendations without fear [\*\*12] of later being subject to public ridicule or criticism; to protect against premature disclosure of proposed policies before they have been finally

formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action.").

In-order for a document to be protected by deliberative process privilege, it must be: (1) an inter-agency or intra-agency document; (2) "predecisional"; and (3) deliberative. See *Klamath*, 532 U.S. at 8 (discussing the agency-origin [\*77] requirement); *Local 3, Int'l Bhd. of Elec. Workers v. NLRB*, 845 F.2d 1177, 1180 (2d Cir. 1988) (enumerating the predecisional and deliberative requirements); *Lead Indus. Ass'n, Inc. v. OSHA*, 610 F.2d 70, 83 (2d Cir. 1979) (same). Plaintiffs concede that the Neiman Memorandum is, at least in part, deliberative, but challenge the government's right to withhold the Memorandum on the other two grounds.

#### I. Intra- and inter-agency communications

As noted above, Exemption 5 protects only "intra-agency" or "inter-agency" [\*\*13] communications. While "intra-agency" documents are those that remain inside a single agency, and "inter-agency" documents are those that go from one governmental agency to another, they are treated identically by courts interpreting FOIA. *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 188, 44 L. Ed. 2d 57, 95 S. Ct. 1491 (1975) ("Exemption 5 does not distinguish between inter-agency and intra-agency memoranda."). The question at issue regarding the intra- or inter-agency requirement is whether the document either originated from or was provided to an entity that is not a federal government agency, in which case the document is not protected by the exemption.

The Supreme Court has cautioned that the term "intra-agency" is not "just a label to be placed on any document the Government would find it valuable to keep confidential." *Klamath*, 532 U.S. at 12. By statutory definition, "agency" means each authority of the Government of the United States," with certain exemptions not relevant here. 5 U.S.C. § 551(1). It is undisputed that the Webster Commission was not an "agency." See *Meyer v. Bush*, 299 U.S. App. D.C. 86, 981 F.2d 1288, 1298 (D.C. Cir. 1993) [\*\*14] (holding that a task force created by the President to study

regulatory relief is not an "agency" under the FOIA). From this uncontested point, plaintiffs reason that Exemption 5 cannot apply. The government, in turn, contends that because the Webster Commission acted as a consultant to the IRS, an agency, in soliciting the Neiman Memorandum, and relied on the Neiman Memorandum in preparing the Webster Report for the IRS, the district court properly concluded that the Neiman Memorandum was an intra-agency communication. The government also argues that the Neiman Memorandum could be deemed an inter-agency communication because it was provided by the Southern District for use in the IRS decision-making process. For the reasons that follow, we conclude that because the Webster Commission was acting as a consultant to the IRS when it solicited the Neiman Memorandum, and the Neiman Memorandum was prepared by the Southern District, an agency, to assist the IRS with determining how best to reform the CID, the Neiman Memorandum is an inter-agency communication.

In considering the scope of Exemption 5, this Circuit has recognized that agencies may require assistance from outside consultants [\*\*15] in formulating policy, and has held that "nothing turns on the point that ... reports were prepared by outside consultants ... rather than agency staff." *Lead Indus.*, 610 F.2d 70 at 83 (citing *Soucie v. David*, 145 U.S. App. D.C. 144, 448 F.2d 1067, 1078 n.44 (D.C. Cir. 1971)); accord *Ryan v. Dep't of Justice*, 199 U.S. App. D.C. 199, 617 F.2d 781, 790 (D.C. Cir. 1980) ("When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an 'intra-agency' memorandum for purposes of determining the applicability of Exemption [\*78] 5."). n2 Instead, "whether a particular document is exempt under (b)(5) depends not only on the intrinsic character of the document itself, but also on the role it played in the administrative process." *Lead Indus.*, 610 F.2d 70 at 80.

n2 In *Klamath*, the Supreme Court recently considered claims that documents submitted by various Indian tribes to the Department of the Interior expressing the tribes' positions on a water allocation project were "intra-agency" documents entitled to protection under Exemption 5. *Klamath*, 532 U.S. at 7-16. In rejecting that argument, the Court observed that "although

neither the terms of the exemption nor the statutory definitions say anything about communications with outsiders, some Courts of Appeals have held that in some circumstances a document prepared outside the Government may nevertheless qualify as an 'intra-agency' memorandum under Exemption 5." *Id.* at 9 (citing *Hoover v. U.S. Dep't of Interior*, 611 F.2d 1132, 1137-38 (5th Cir. 1980); *Lead Indus.*, 610 F.2d 70 at 83; *Soucie*, 448 F.2d at 1067). While the Supreme Court declined to rule on the validity of this "consultant corollary," it distinguished the tribes from consultants, noting that the latter typically "have not been communicating with the Government in their own interest or on behalf of any person or group whose interest might be affected by the Government action addressed by the consultant [and thus] may be enough like the agency's own personnel to justify calling their communications 'intra-agency.'" *Klamath*, 532 U.S. at 11, 12. Unlike in *Klamath*, plaintiffs in this case do not argue that the Webster Commission is an interested party.

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Plaintiffs acknowledge that this Court has held that communications with consultants may be considered intra-agency, but argue, relying heavily on the D.C. Circuit's opinion in *Dow Jones & Co. v. Dep't of Justice*, 286 U.S. App. D.C. 349, 917 F.2d 571, 574 (D.C. Cir. 1990), that because the memorandum was prepared to assist the Webster Commission with its decisionmaking and was never reviewed by any IRS decisionmaker, the consultant principle is inapposite. In *Dow Jones*, the government had argued that documents provided by the Department of Justice to Congress were protected as inter-agency documents. The D.C. Circuit rejected that position on the grounds that documents prepared to assist with Congress's deliberative process could not be entitled to Exemption 5 privilege because Congress was not an agency for FOIA purposes. *Id.* Here, in contrast, the Webster Commission was not acting on its own behalf in requesting the Neiman Memorandum from the Southern District--rather, it was acting as a consultant to the IRS, an agency, to assist that agency with developing policy recommendations regarding the CID. Plaintiffs recognize, as they must, that the privilege would [\*\*17] have been maintained had Neiman given her memorandum directly to the IRS. *Renegotiation Bd.*, 421 U.S. at 188 ("By

including inter-agency memoranda in Exemption 5, Congress plainly intended to permit one agency possessing decisional authority to obtain written recommendations and advice from a separate agency not possessing such decisional authority without requiring that the advice be any more disclosable than similar advice received from within the agency."). The fact that Neiman transmitted it to the Webster Commission for use in the Commission's recommendations on IRS policy does not alter our view of the matter.

Plaintiffs also contend that an agency consultant's source material cannot be withheld under Exemption 5 where the author had no reasonable expectation that her material would be kept confidential. According to plaintiffs, "where there is no fear of publicity, there is no basis in policy for extending Exemption 5 to consultants' work, especially where the statutory language does not provide for such a result." The issue here, however, is not whether the Webster Commission's public Report is exempt, but rather, whether the [\*79] Commission may be considered a [\*\*18] part of the IRS for purposes of determining whether the Neiman Memorandum falls within the scope of Exemption 5 as an inter-agency communication. Although the Webster Commission may have had no intention to keep private *its* findings and recommendations, this has no bearing on the Southern District's expectation that its opinions would be kept confidential by the Webster Commission and the IRS. In fact, this Court has held that editorial decisions such as determining which parts, if any, of a confidential document to include in a public record are precisely the type of internal agency decisions that Exemption 5 was designed to protect. *See Lead Indus.*, 610 F.2d 70 at 86 ("If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so."). n3

n3 To the extent that plaintiffs argue that the publication of the Report with a reference to the Neiman Memorandum suggests that there is no basis to protect the Memorandum as a consultant's source material, that argument is addressed in greater detail below in the discussion of waiver.

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Just as predecisional documents prepared by the Webster Commission for the IRS would be deemed intra-agency communications, *see 610 F.2d 70 at 83*, otherwise privileged communications by another agency intended to assist the Commission with its ultimate responsibilities to the IRS are, for purposes of the FOIA, inter-agency communications with the IRS. Cf. *Dow Jones*, 917 F.2d 571 at 575 ("Exemption 5 permits an agency to protect the confidentiality of communications from outside the agency so long as those communications are part and parcel of *the agency's* deliberative process."). The Webster Commission was acting as a consultant to the IRS when it solicited the Memorandum. It was charged with assisting the IRS with determining how best to reform the CID, and the Commission's Report proposed solutions to specific problems within the CID based on the information conveyed to the Commission by the Southern District, among its other sources. n4 To conclude that the deliberative process privilege does not apply when an outside consultant to an agency receives information from another agency effectively would condition the use of consultants on both agencies' willingness [\*\*20] to disclose any information the consultant reviews in the process of its work and would unreasonably hamper agencies in their decision-making process.

n4 Although plaintiffs state that the Webster Commission "essentially functioned as a watchdog, providing some measure of public oversight over the IRS," they acknowledge that part of the Commission's assignment included evaluating CD. Policies and making recommendations for improvement.

Insofar as the communications were between the Southern District and a consultant for the IRS, the Neiman Memorandum is more properly considered an inter-agency document than an intra-agency document, in that it was prepared by one governmental agency for use by another agency. n5 The interposition of the Webster Commission between the two agencies does not alter this result. We therefore find the Neiman Memorandum eligible for protection under the first prong of Exemption 5.

n5 Alternatively, as a document prepared for use by a consultant to an agency, the Neiman

Memorandum perhaps could also be viewed as an intra-agency document, as the district court concluded. Because we find that the Memorandum is an inter-agency document, we do not decide that issue.

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[\*80] II. Predecisional

"A document is predecisional when it is prepared in order to assist an agency decisionmaker in arriving at his decision." *Grand Cent. P'ship*, 166 F.3d 473 at 482 (internal quotation marks and citations omitted). Protected by this privilege are "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Id.* (internal quotation marks and citations omitted). However, "the privilege does not protect a document which is merely peripheral to actual policy formation; the record must bear on the formulation or exercise of policy-oriented judgment." *Id.* (quoting *Ethyl Corp. v. EPA*, 25 F.3d 1241, 1248 (4th Cir. 1994) (internal quotation marks omitted)).

Plaintiffs argue that because the Neiman Memorandum was provided to the Webster Commission, rather than to the IRS, it cannot be deemed predecisional, as it was never relied upon by any IRS decisionmaker. As source material for the Webster Report, however, the Neiman Memorandum was prepared for the Commission in order to assist the IRS in its decisionmaking regarding [\*\*22] the future of the CID. This decisionmaking is precisely the type contemplated by *Grand Central Partnership*.

Plaintiffs further contend, citing *Maricopa Audubon Society v. United States Forest Service*, 108 F.3d 1089, 1094 (9th Cir. 1997), that the district court erred in failing to identify any specific decision connected to the Memorandum. In *Maricopa*, the government had argued that "because agencies are involved in a continual process of self-examination, [they] need not identify a specific decision in which [documents claimed to be protected under Exemption 5] will culminate in order for those materials to be 'predecisional.'" *Id.* The Ninth Circuit disagreed, holding that while an agency need not actually demonstrate that a specific decision was made in reliance on the allegedly predecisional material, the government

must show that the material was prepared to assist the agency in the formulation of some specific decision. *Id.* In other words, while the agency need not show *ex post* that a decision was made, it must be able to demonstrate that, *ex ante*, the document for which executive privilege is claimed related to a specific decision [\*\*23] facing the agency. See *Sears*, 421 U.S. at 151 n.18. The Neiman Memorandum, however, meets the criteria established in *Maricopa*, as it is "not merely part of a routine and ongoing process of agency self-evaluation," *Maricopa*, 108 F.3d at 1094, but rather was specifically prepared for use by the Webster Commission in advising the IRS on its future policy with respect to the CID. As in *Maricopa*, the fact that the government does not point to a specific decision made by the IRS in reliance on the Neiman Memorandum does not alter the fact that the Memorandum was prepared to assist IRS decisionmaking on a specific issue.

We therefore conclude that the district court did not err in holding that the Neiman Memorandum falls within the Exemption 5 privilege.

III. Waiver

Even though protected by Exemption 5, the government nonetheless may be required to disclose the Neiman Memorandum if it waived the deliberative process privilege. Consistent with 5 U.S.C. § 552(a)(2), which requires disclosure of *final* agency decisions, the Supreme Court held in *Sears* that production of ostensibly predecisional material may be compelled where "an agency [\*\*24] chooses expressly to adopt or incorporate by reference an intra-agency memorandum previously [\*81] covered by Exemption 5 in what would otherwise be a final opinion." *Sears*, 421 U.S. at 161. In so concluding, the Supreme Court reasoned that:

the probability that an agency employee will be inhibited from freely advising a decisionmaker for fear that his advice, if adopted, will become public is slight. First, when adopted, the reasoning becomes that of the agency and becomes its responsibility to defend. Second, agency employees will generally be encouraged rather than discouraged by public knowledge that their policy suggestions have been adopted by the

agency. Moreover, the public interest in knowing the reasons for a policy actually adopted by an agency supports the District Court's decision below.

*Id.*

Plaintiffs contend that the citation to and publication of an excerpt of the Neiman Memorandum in the Webster Report, which was ultimately made public, was a waiver of the privilege provided by Exemption 5. Under the circumstances here, however, the minor references to the Neiman Memorandum cannot be said to be an express adoption or incorporation. [\*\*25] *See Access Reports v. Dep't of Justice*, 288 U.S. App. D.C. 319, 926 F.2d 1192, 1197 (D.C. Cir. 1991) (distinguishing between "reference to a report's conclusions [and] adoption of its reasoning," and noting that "it is the latter that destroys the privilege"); *Common Cause v. IRS*, 207 U.S. App. D.C. 321, 646 F.2d 656, 660 (D.C. Cir. 1981) (holding that a "casual allusion in a post-decisional document to subject matter discussed in some pre-decisional, intra-agency memoranda" does not waive Exemption 5). n6 Accordingly, we conclude that the government did not waive its right to assert the deliberative \* process privilege as to the Neiman Memorandum.

n6 We also note that this "waiver by incorporation" doctrine applies only where the agency expressly adopts or incorporates an inter-agency memorandum "in what otherwise would be a final opinion." *Sears*, 421 U.S. at 161 (emphasis added). Arguably, as the Webster Report was not drafted by IRS decisionmakers, and it was prepared to aid the IRS in making its decision about internal reforms, it was not a "final opinion."

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We also reject plaintiffs' position that Neiman's knowledge that the Webster Commission would issue a published report constitutes a waiver of the deliberative process privilege. Even if Neiman could have been expected to know that a report would be published, we find no reason to doubt that she expected that her Memorandum would remain confidential. As previously noted, she prepared the Memorandum to give the Southern District's recommendations, based on its experience, to the IRS, for use in the IRS's internal

evaluation through the Webster Commission. In choosing to reveal the existence of the Memorandum and to publish a very brief excerpt, the Commission exercised its discretion by revealing only information that it determined should be made public and withholding the rest. *Cf. Rockwell Int'l Corp. v. Dep't of Justice*, 344 U.S. App. D.C. 226, 235 F.3d 598, 603-04 (D.C. Cir. 2001) (rejecting claim that partial publication of a document waived the attorney-client privilege as to the remainder of that document). Although the fact that the agency in *Rockwell International* took additional steps to ensure confidentiality also factored into the D.C. Circuit's finding [\*\*27] that the attorney-client privilege had not been waived in that case, we conclude that, for purposes of the deliberative process privilege, the incorporation of one sentence from the Neiman Memorandum in the published Report is not inconsistent with the IRS's or the Southern District's "desire to keep the rest secret." 235 F.3d 598 at 605.

[\*82] IV. *In camera* review

Finally, plaintiffs urge us to release any portions of the Neiman Memorandum that contain purely factual information. The FOIA requires that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b).

At oral argument, we requested that the government provide a redacted version of the Neiman Memorandum indicating what factual information, if any, was within the public domain. The government complied, but continued to maintain that this information should be withheld because it was intertwined with and provided insight into privileged material. After *de novo in camera* review of the original and redacted memoranda, we conclude that the district court properly found [\*\*28] that "the document is predominantly evaluative, evaluating both policies and procedures of the United States Attorney for the Southern District of New York in criminal investigations involving tax matters and those of the Internal Revenue Service, and recommending procedures for the Internal Revenue Service." We also conclude that even the limited factual material admittedly in the public domain is too intertwined with evaluative and policy discussions to require disclosure. *See Lead Indus.*, 610 F.2d 70 at 85.

312 F.3d 70, \*82; 2002 U.S. App. LEXIS 23672, \*\*28;  
90 A.F.T.R.2d (RIA) 7320; 59 Fed. R. Serv. 3d (Callaghan) 1285

CONCLUSION

For the foregoing reasons, we affirm the orders of  
the district court granting defendants' motion for

summary judgment and denying plaintiffs' cross motion  
for summary judgment.



Deliberative Process  
Privilege

**FAX**

Date 3-21-06

Number of pages including cover sheet -7-

TO: Juliet Hodgkins

FROM: Gracia Hillman  
2710 Unicorn Lane, NW  
Washington, DC 20015

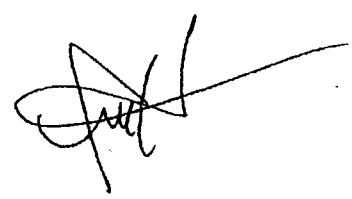
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REMARKS:  Urgent  For your review  Reply ASAP  Please Comment

Comments to Serrano letter -  
pages 3, 4, 5, 7, 8, 9



Congressman Jose Serrano, Chairman  
House Appropriations Subcommittee on Financial Services and General Government  
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EAC needed to provide accredited labs on a temporary, interim basis to ensure that the agency had the means to implement its certification program. Additionally, EAC would be compelled to implement a provisional, pre-election certification program to replace services offered by NASED. EAC could not wait for NIST to recommend laboratories. Fortunately, HAVA provided a mechanism for EAC to take such action in Section 231(b)(2)(B). This section requires that EAC publish an explanation when accrediting a laboratory without a NIST recommendation. A notice was published on EAC's Web site to satisfy this requirement.

**EAC's Interim Accreditation Program.** At a public meeting in August 2005 held in Denver, the commissioners received a staff recommendation outlining the details of the interim accreditation program. The staff recommendation included a process in which the three laboratories previously accredited by NASED – CIBER, SysTest Labs, and Wyle Laboratories – would be allowed to apply for interim accreditation. In December of 2005, EAC officially began accepting applications for a limited interim accreditation program. As stated in the letters, the purpose of the interim accreditation program was to provide accredited laboratories to test voting systems to federal standards, until such time as NIST/NVLAP was able to present its first set of recommended laboratories. This accreditation was limited in scope to the 2002 Voluntary Voting System Standards and required the laboratory to apply to the NVLAP program to receive a permanent accreditation. The letters also sought variety of administrative information from the laboratories and required them to sign a Certification of Laboratory Conditions and Practices. This certification required the laboratories to affirm, under penalty of law, information regarding laboratory personnel, conflict of interest policies, recordkeeping, financial stability, technical capabilities, contractors, and material changes.

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In order to accredit a laboratory (even on an interim basis), EAC needed to contract with a competent technical expert to serve as a laboratory assessor. EAC sought a qualified assessor with real-world experience in the testing of voting systems. Ultimately, only one individual responded to EAC's solicitation. The individual was (at the time) the only individual known to have the requisite experience and assessor qualifications. The contractor reviewed each of the laboratories that applied. The review was performed in accordance with international standards, the same standards used by NVLAP and other laboratory accreditation bodies. This standard is known as International Standard ISO/IEC 17025, *General Requirements for the Competence of Testing and Calibration Laboratories*. In addition, the EAC assessor (who also currently serves as a NVLAP assessor) applied NIST Handbooks 150, *Procedures and General Requirements* and NIST Handbook 150-22, *Voting System Testing*.

CIBER, SysTest Labs, and Wyle Laboratories applied for accreditation under the interim program. Each, as required, had previously received a NASED accreditation. EAC's

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scope, (1) it did not certify voting systems, just modifications and (2) the certification was provisional and, thus, expired.

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assessor visited each of the labs and conducted a review consistent with the standards noted above. The assessor reviewed laboratory policies, procedures and capabilities to determine if the laboratories could perform the work required. Laboratory assessments do not make conclusions regarding past laboratory work product. Two of the applicant laboratories, SysTest Laboratories, L.L.C., and Wyle Laboratories, Inc. received an interim accreditation. The assessor's reports and EAC action regarding these laboratories are available on the EAC Web site.<sup>2</sup> EAC promptly published on its Web site information regarding its decision on accreditation (August and September of 2006). This notice provides some brief background on the interim accreditation process, starting with the fact that three previously NASED accredited laboratories were invited to apply to the program, including information on the program's requirements and limitations and ending with the identity and contact information of the two laboratories accredited. Information was also electronically forwarded to EAC's list of stakeholders via e-mail. The EAC stakeholders e-mail list includes almost 900 election officials and interest groups, nationwide. Staff members for EAC oversight and appropriations committees are included in this list of stakeholders. In addition to EAC's Web site and e-mail announcements, on September 21, 2006 EAC's Executive Director reiterated the Commission's decision at a public meeting Web cast to the EAC Web site. This announcement identified the interim accredited labs by name. Furthermore, in October 26, 2006, the two interim accredited laboratories testified at a nationally televised public hearing.

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**The Interim Accreditation Program and CIBER.** The third laboratory, CIBER, has yet to satisfy the requirements of the interim accreditation program. The initial assessment of CIBER revealed a number of management, procedural and policy deficiencies that required remedial action before the laboratory could be considered for accreditation. These deficiencies are identified in the initial CIBER/Wyle report. They were also brought to the attention of CIBER's President of Federal Solutions in a letter from EAC's Executive Director dated September 15, 2006. The letter outlines, consistent with recommendation of EAC's assessor, the steps the laboratory must take to achieve compliance. The letter requires CIBER to:

- a. *Assign resources, adopt policies and implement systems for developing standardized tests to be used in evaluating the functionality of voting systems and voting system software. Neither ITA Practices, CIBER nor any of its partners will be permitted to rely on test plans suggested by a voting system manufacturer.*
- b. *Assign resources, adopt policies and implement systems for quality review and control of all tests performed on voting systems and the report of results from those tests. This shall include provisions to assure that all*

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<sup>2</sup> Note: The Wyle and CIBER assessment was completed as a joint report. The two labs have a cooperative agreement to work together in test voting systems (Wyle performing hardware testing and CIBER software testing).

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*required tests have been performed by ITA Practices, CIBER or its accredited partner lab.*

Finally, the letter required an additional "follow-up" assessment of the laboratory.

The follow-up assessment of CIBER was performed by EAC's assessor in December of 2006. The findings of this assessment were documented in a report, which is available on the EAC Web site. In the findings, the assessor recognized significant changes CIBER had made to its program in response to the initial assessment, including new policies regarding test procedures, management and personnel. The report also noted a number of non-conformities that had yet to be addressed by the laboratory.

In a letter dated January 3, 2007, CIBER provided a written response to EAC's follow-up assessment and report. The response sought to address the deficiencies noted in the December assessment. Additionally, CIBER officials requested to meet with EAC staff to discuss their January 3 response. This meeting took place at EAC on January 10, 2007. At the meeting, EAC staff informed CIBER that their report could not serve as the basis of accreditation because it failed to resolve all outstanding issues. A number of CIBER responses to noted deficiencies were listed as "TBD." EAC's assessor and Certification Program Director formally reviewed CIBER's response. EAC provided CIBER notice of the deficiencies that remain outstanding and informed them of the steps they must take to come into compliance by a letter dated February 1, 2007. Due to the fact that the purpose and usefulness of the interim accreditation program is coming to a close, EAC allowed CIBER 30 days in which to document their full compliance. After this time, the program will be closed and no further assessment actions will be performed under the interim program. CIBER was notified of this procedure by letter dated January 26, 2007, and on February 8, 2007, EAC voted to close its interim laboratory accreditation program effective March 5, 2007.

Information related to CIBER's status in the EAC interim accreditation program was not released prior to January 26, 2007. It was EAC's belief, in consultation with NIST, that it would be improper to release information regarding an incomplete assessment. However, on January 25, 2007, CIBER took the affirmative action of making this information available to a third party, the New York State Board of Elections. With this action, CIBER made the information public and EAC believed it was incumbent to provide this information to the public. As such, on January 26, 2007, EAC posted on its Web site assessment reports, correspondence, and responses from CIBER related to their progress in the EAC interim accreditation program.

Copies of the two reports issued by the EAC assessor concerning CIBER's laboratory accreditation assessments are attached as Appendixes 1 and 2 to this letter.

And the current status is - - -

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was requested is a draft of a final document that has already been released after being vetted by staff and approved by the EAC Commissioners. It is available in its final form on EAC's Web site, [www.eac.gov](http://www.eac.gov). The draft document at issue was created by two contract employees hired pursuant to 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 were 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. As stated by their contracts, 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." Moreover, the contracts clearly forbid the consultants from releasing the draft they created consistent with the privilege covering the draft report. The contract states

All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

Finally, the purpose or subject of the draft report at issue was to make an EAC determination on how voter fraud should be studied by the agency. This was to be done by (1) assessing the nature and quality of the information that presently exists on the subject matter, (2) defining the terms and scope of EAC study as proposed by HAVA, (3) determining what is to be studied and (4) determining how it is to be studied. In addition, the Consultants were asked to develop a definition of the phrases "voting fraud" and "voter intimidation."

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. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC conducted this review of the draft voter fraud and intimidation report provided by Ms. Wang and Mr. Serebrov. EAC found that the draft report failed to provide a definition of the terms as required, contained conclusions that were not sought under the terms of the contract or were not supported by the underlying research, and allegations that showed bias. EAC staff edited the draft report to correct the problems mentioned above and included all of the consultants' and working groups' recommendations. The final report was adopted by EAC on December 7, 2007 during its public meeting. The final report as well as all of

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the underlying research conducted by Mr. Serebrov and Ms. Wang are available on EAC's Web site, [www.eac.gov](http://www.eac.gov).

EAC understands and appreciates that the a request from a Congressional committee is exempt from the provisions of FOIA, and as such, EAC is providing this draft document despite the fact that the deliberative process exemption clearly applies to its contents. The draft report has been attached as Appendix 3 to this letter.

### Draft Voter Identification Report

The third document requested is the draft report prepared by Rutgers University in conjunction with Moritz College of Law. Rutgers and Moritz served as contractors to EAC and produced this draft document pursuant to the provisions of the contract governing that relationship. This draft report, like the draft voter fraud and voter intimidation report, is predecisional under the deliberative process exemption to FOIA.

With regard to the Voter Identification draft report, it was created by Rutgers University in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voting identification procedures." The stated objective of the contract was 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... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

As with the voter fraud and intimidation study mentioned above, the contractors were provided guidance, information, and were directed by EAC personnel. The final product they delivered (draft report sought) was identified as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action. EAC has not completed review and vetting of this document. However, initial review of this document reveals data and analysis that causes EAC concern. 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 turn out. 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

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and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>7</sup> After this review process is completed, EAC will make a decision whether to adopt or reject the draft report.

Again, recognizing that a request from a Congressional committee is exempt from the provisions of FOIA, EAC is providing this draft document despite the fact that the deliberative process exemption clearly applies to its contents. The draft report has been attached as Appendix 4 to this letter.

Thank you for your requests and your interest in election administration. If you have further questions, please do not hesitate to contact me.

Sincerely,

Donetta Davidson  
Chair

cc: Congressman Maurice Hinchey (letter only)

<sup>7</sup> See EAC Public Testimony, February 8, 2007, page 109.

? Transcript

## 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.

Comment (GH): In Footnote #2 Regarding the estimate of non-citizens Perhaps this could be clarified to say whether the % of non-citizens was in the VAP or of the US population as whole. It is not clear to me.

### 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

<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. 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. *VAP for 2004. Thus 2004*

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

*These data did not differentiate between citizens and non-citizens.*

*of citizens included in voting age population statistics in 2000 to*



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. EAC, however, is releasing the data and analysis conducted by Contractor.

**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.

*All of the material provided by the Contractor is attached.*

- 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, 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.

DRAFT

## 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>

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### 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 reduced the numbers by applied the same percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated were non-citizens in 2000 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.

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<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.
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- 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.

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Attorney-Client  
Privilege

Deliberative Process  
Privilege

Juliet E. Hodgkins/EAC/GOV  
02/01/2007 03:53 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc

bcc

Subject Fw: More thoughts on Eagleton draft report

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
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Washington, DC 20005  
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— Forwarded by Juliet E. Hodgkins/EAC/GOV on 02/01/2007 03:53 PM —

Juliet E. Hodgkins/EAC/GOV

02/01/2007 03:29 PM

To Donetta Davidson, Karen Lynn-Dyson

cc

Subject More thoughts on Eagleton draft report

After having read the Eagleton draft report, I have some thoughts and questions:

I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the staticians actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomaly for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.

My second concern is how they (statistically speaking) differentiate between a minimum requirement (i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Juliet Thompson Hodgkins  
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027658



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

**MEMORANDUM**

TO: Commissioners DeGregorio, Martinez, Davidson & Hillman  
FROM: Juliet Thompson Hodgkins  
DATE: February 6, 2006  
RE: Open Meetings

**BACKGROUND**

Based upon the number of questions that we have recently had concerning meetings of the Commission and meetings that groups of Commissioners want to have with various of our stakeholders, I thought it prudent to distribute this memorandum that sets forth the basic principles of the federal open meetings law, what is an open meeting and which meetings must be publicized.

**WHAT IS A MEETING?**

A meeting is considered to be the gathering and deliberation of a sufficient number of the agency members to constitute a quorum that can act on behalf of the agency and wherein the members conduct or dispose of official agency business:

the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e)...

5 U.S.C. 552b(a)(2).

Each agency should have a set of regulations that further defines meetings for purposes of the Government in the Sunshine Act. For example, the FEC has defined meeting to exclude the type of circulation voting procedure that this

Commission has adopted. This agency has not yet adopted regulations governing its public meetings, but should do so in this fiscal year.

In addition to these statutory and regulatory provisions, case law has interpreted the meaning of meeting. Discussions between Commission staff and the Commissioners as well as circulation of memoranda regarding a subject are **not** considered a meeting for purposes of the Government in the Sunshine Act.

Discussions between members of Civil Aeronautics Board and staff and circulation of memoranda among Board members were activities common to any body of responsible public officials preparing to make important decision, and the kind of activity forbidden by Sunshine Act did not occur. Republic Airlines, Inc. v. C.A.B., C.A.8 1985, 756 F.2d 1304.

Furthermore, meetings to discuss whether to have another meeting are not considered to be covered by the Sunshine Act.

This section exempts from its definition of "meeting" deliberations about whether to schedule future meetings with shorter than seven-day notice; thus, meeting at which Federal Communications Commission did no more than set a date to consider applicant's amended application for transfer of television status was not subject to notice provisions of this section. Washington Ass'n for Television and Children v. F. C. C., C.A.D.C.1981, 665 F.2d 1264, 214 U.S.App.D.C. 446.

### **WHEN MUST A MEETING BE OPEN?**

Federal law requires that meetings of a government agency be open.

Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of **every meeting of an agency shall be open to public observation.**

5 U.S.C. 552b(b).

For purposes of this requirement, the term agency means:

any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

5 U.S.C. §552b(a)(1).



There are ten statutory exemptions for the requirement of an open meeting. In these instances, a meeting may be closed by vote of the Commission:

- (1) disclose matters that are
  - (A) specifically authorized under criteria established by an Executive order to be **kept secret in the interests of national defense or foreign policy** and
  - (B) in fact properly **classified** pursuant to such Executive order;
- (2) relate solely to the **internal personnel rules and practices** of an agency;
- (3) disclose matters **specifically exempted from disclosure by statute** (other than section 552 of this title), provided that such statute
  - (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
  - (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) disclose **trade secrets and commercial or financial information** obtained from a person and privileged or confidential;
- (5) involve **accusing any person of a crime**, or formally censuring any person;
- (6) **disclose information of a personal nature** where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) **disclose investigatory records compiled for law enforcement purposes**, or information which if written would be contained in such records, but only to the extent that the production of such records or information would
  - (A) interfere with enforcement proceedings,
  - (B) deprive a person of a right to a fair trial or an impartial adjudication,
  - (C) constitute an unwarranted invasion of personal privacy,
  - (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,
  - (E) disclose investigative techniques and procedures, or
  - (F) endanger the life or physical safety of law enforcement personnel;
- (8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- (9) disclose information the premature disclosure of which would—
  - (A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to

(i) lead to significant financial speculation in currencies, securities, or commodities, or  
(ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

5 U.S.C. 552b(c)(1) – (10).

Obviously, numbers 1, 8, 9, and 10 do not and will not apply to this Commission.

### **REQUIREMENTS OF AN OPEN MEETING**

Notice must be provided at least one week in advance of the meeting.

In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

5 U.S.C. 552b(e)(1).

In addition, each and every portion of the meeting must be open to the public unless the meeting is closed by vote due to the discussion of a topic covered under the exemptions discussed above. (See 5 U.S.C. 552b(b) and (c)(1) – (10))

## **CONCLUSION**

A quorum for this Commission is set by statute. HAVA provides that any action requires a vote of three Commissioners. As such, the presence and deliberation of three Commissioners constitute a quorum of the Commission.

Meetings must be held in compliance with the Government in the Sunshine Act. Thus, all meetings of the Commission (that is where 3 or more Commissioners and present and deliberating) shall be noticed and open to the public, unless one or more exceptions for closure of the meeting applies. No meetings of three or more Commissioners should be held with persons other than staff of this Commission without following the provisions of the Government in the Sunshine Act.



**U.S. ELECTION ASSISTANCE COMMISSION**  
**1225 New York Ave. NW - Suite 1100**  
**Washington, DC 20005**

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

**MEMORANDUM**

**TO: Chairman Soaries**

**FROM: Julie Thompson**

**RE: Open Meetings**

**DATE: November 12, 2004**

The open meetings requirement is found in 5 USC § 552b. Generally, that statute defines a meeting of a covered agency to be:

the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e)

5 USC 552b(a)(2). The statute, further specifically prohibits the conduct or disposition of agency business other than in accordance with the provisions of the open meetings law. 5 USC 552b(b). There are several enumerated exceptions to what must be conducted in an open and public meeting:

- (1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;
- (2) relate solely to the internal personnel rules and practices of an agency;
- (3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) involve accusing any person of a crime, or formally censuring any person;

## **ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

- (6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;
- (8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;
- (9) disclose information the premature disclosure of which would--
  - (A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or
  - (B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

5 USC §552b(c). In addition, the exceptions to the public records law, those documents which are not required to be made open and available to the public, are also exceptions to items that must be discussed in an open and public meeting.

- (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from

## **ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

- the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
  - (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
  - (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
  - (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
  - (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
  - (9) geological and geophysical information and data, including maps, concerning wells.

5 USC § 552(b).

The open meetings law does not require the agency to hold meetings. Rather, if the agency holds a meeting it must comply with the open meeting requirements where applicable. This is why the agency can use notation voting (tally votes) in lieu of a meeting.

With regard to the specific discussion that we had concerning the possibility of holding a meeting with certain advocacy groups, I believe that this will run afoul of the open meetings law, as such meeting will inevitably reveal information and spurn deliberations, analysis and ultimately decisions related to the past election. It would be preferable to have these advocacy groups present at a public meeting of the Commission for a number of reasons: (1) it would allow an open and public discussion of their impressions of the election; (2) it would allow the Commission to invite all advocacy groups with an interest in this topic; and (3) it would prevent any allegations that the Commission met behind

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

closed doors with certain but not all advocacy groups – thus avoiding any appearance of favoritism. We have already discussed the possibility of having a public meeting on December 16 (or the date that is finally selected) where certain elections stakeholders are asked to give reports on their sense of the election. In addition, we have discussed the possibility of having public hearings in the field wherein we gather information regarding the positives and negatives associated with the November 2, 2004 election. These would be perfect opportunities to publicly gather the information that we are seeking through a meeting with the advocacy groups.

Attorney-Client  
Privilege

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

08/30/2006 05:23 PM

To Gavin S. Gilmour/EAC/GOV@EAC, jlayson@eac.gov  
cc  
bcc  
Subject Eagleton letter

Kind of tough. Let me know what you think.



letter regarding release of Eagleton data.doc

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

027668



John Weingart  
Associate Director  
Eagleton Institute of Politics  
Rutgers University

New Brunswick, NJ

Dear Mr. Weingart:

Thank you for your recent inquiry of August 16, 2006 regarding the anticipated release of data contained in the Eagleton Institute of Politics and Moritz College of Law studies on provisional voting and voter identification, which were conducted for the U.S. Election Assistance Commission.

While your assertion that election officials could benefit from the data compiled in the course of your research may be true, I would urge Eagleton and Moritz to exercise caution in the release of this information without further work to ensure its accuracy and completeness. Eagleton and Moritz received information from several election officials at the Standards Board and Board of Advisors meetings that information contained in the data set and draft report are inaccurate or incomplete. Furthermore, as you will recall, EAC accepted the report based on this data in "draft" as the completion of your contract due to our concerns about the data and the analysis of that data. In light of those concerns, EAC has not yet completed its review of the "draft" report and has not made final determinations on the release of any future document based on that data and draft report.

As such, any release of the data gathered by Eagleton or Moritz may not be released in conjunction with or using EAC's name as endorsing the content, quality or veracity of such data. I trust that this clarifies how Eagleton and Moritz may use the data gathered in the performance of its contract with the EAC. If you have any questions, please feel free to contact me.

Sincerely,

Thomas Wilkey  
Executive Director

Attorney-Client  
Privilege

Deliberative Process  
Privilege

Juliet E. Hodgkins/EAC/GOV  
03/13/2007 06:06 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, [REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Edited version of the Voter ID statement

Commissioners,

I intended to get this out to you much earlier today, but the day got away from me. After our hearing last week before the House Appropriations Subcommittee and the requests that were made for the draft reports of the Eagleton and Voter Fraud studies, I think that we must take a different approach to addressing the quality of these reports. While it may or may not be our intention to release these documents publicly, we MUST respond to the request made from a Congressional Committee and cannot use FOIA exemptions as FOIA does not apply to them. I believe that it is safe to assume that if we provide these documents to the Committee, even with a letter explaining their predecisional nature, that these documents will be released into the public spectrum. As such, I feel that EAC needs to make a statement regarding the quality of these reports and why we are making (or have made) a decision not to adopt the draft reports that were produced by our contractors.

Thus, I edited the statement that Karen produced with comments that reflect why we will not adopt the Eagleton report. That document is attached below. I would suggest that we put similar statements regarding Eagleton's report and the Voter Fraud draft report into a letter that I am drafting to go to the Committee with the requested documents. I will edit that letter to include similar comments tonight/tomorrow morning and will circulate it to you.

Please let me know if you have any questions, concerns, comments, etc.



Voter ID edited.doc

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

027670

## **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. 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.

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 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 consideration of voter identification requirements.

However, EAC has concerns regarding the research data, analysis and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation into determine if these laws have an impact on turnout rates based on the type of voter identification requirements. 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 less reliable data set

based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." These data and the statistical analysis used by the Contractor were rightly criticized by independent working and peer review groups comprised of social scientists and statisticians. EAC believes that the Contractor's recommendation or draft report is so fundamentally flawed that none of the draft findings can be adopted or rehabilitated to form a reliable, accurate and useful product. Thus, EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the will not issue a report based upon this study.

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 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.

**DRAFT**

Attorney-Client  
Privilege

Juliet E. Hodgkins/EAC/GOV  
03/28/2007 09:55 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
bcc

Subject Re: Comments on Eagleton's response

I have not reviewed the various laws, but I believe that it would require that kind of review to answer your question accurately. My guess is that much like other election-related provisions, the language of the statute and the placement of the statute in the code or statutory scheme will dictate the answer to the question. Some may not even be written into statute. If you want me to, I can get someone to start working on that review.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
03/28/2007 06:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC  
Subject Re: Comments on Eagleton's response

Julie, in your legal opinion, is stating one's name considered identification in the states where it is the threshold requirement?

Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 03/28/2007 06:19 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Jeannie Layson  
**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.

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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 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

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questions concerning my comments, I will be around tonight and will be available tomorrow afternoon by Blackberry.

Juliet T. Hodgkins  
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027676



Attorney-Client  
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. cc Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, jlayson@eac.gov  
bcc

Subject Comments on Eagleton's response

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Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3100

027678

**SECTION 551 DEFINITIONS**

**RULE MAKING:**

Agency process for making, changing or repealing a rule.

**RULE:**

An agency statement of general or particular applicability AND future effect -- Designed to

- implement, interpret, or prescribe law or policy OR..
- describing the organization, procedure or practice requirements of the agency...

AND includes the approval or prescription for the future OF:

- rates,
- wages,
- corporate or financial structures or reorganizations thereof,
- prices,
- facilities,
- appliances, services or allowances therefore or of valuations,
- costs,
- or accounting,
- or practices bearing on any of the above.

**AJUDICATION:**

Agency process for formulating an ORDER.

**ORDER:**

Final disposition (affirmative or negative) of an agency in a matter other than rule making but including licensing.

**LICENSING:**

Agency process granting, renewing, denying, suspending, revoking, etc... a license.

**LICENSE:**

Whole or part of any agency permit, certificate, approval, registration.... or other form of permission.

**SECTION 553 Rule Making**

- 1) General Notice Required... Notice of proposed rule making published in Federal Register.
  - a. No timeline noted.
  - b. Exceptions. Such notice not required for interpretive rules, general statements of policy, or rules of agency organization, procedure or practice... OR finding of good cause shows such filing is impractical unnecessary, etc...

- 2) After notice, above, agency shall give the public an opportunity to participate in the rulemaking through submissions of written data... or oral presentations.
- 3) After consideration of the relevant materials presented, the agency shall incorporate in the rules adopted, a concise general statement of their basis and purpose. If statutes require a hearing on the record different rules apply (sec 556 & 557)
- 4) Publication of the substantive rule must be made 30 days before it becomes effective. (exceptions are noted).

***SEC 554 ADJUDICATIONS (Agency process for making orders –final decisions that are not rules—includes licensing (i.e. certification/approval permit)***

Applies only when adjudication required by statute to be determined on the record after opportunity to be heard. ??? does HAVA require this... it is silent to the whole process.

Section set rules for such a proceeding

**SEC 556 HEARINGS....**

This section on hearings applies only when required by the Rule Making Section (553) or the Adjudication Section (554). Under both sections hearings are only required when required by statute.

Gavin S. Gilmour/EAC/GOV  
04/11/2007 04:10 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject FOIA QUESTION

Per your question concerning draft documents and agency policies, my experience is that such documents are rarely released. First, the basis for withholding such documents is a litigation privilege referred to as the deliberative process privilege. FOIA (as a matter of necessity) incorporates litigation privileges as a statutory exemption. Like most privileges, the deliberative process privilege can be waived by the agency. As such, it is a voluntary exemption under FOIA (unlike exemptions for other matters like the withholding of classified information).

Agencies do have FOIA regulations. I am familiar with the Air Force regulation and took a quick look at those of the DOL and DOE. The regulations are generally focused upon procedure (how a request is processed, appealed, etc...) . Sometimes a regulation will outline or summarize exemptions for the benefit of its employes (the Air Force did this). Generally, they do not contain specific policies regarding the retention of drafts. The closest you will see agencies come to this is a general statement of policy relating to dealing with non-mandatory exemptions. For example the DOE states: "[t]o the extent permitted by other laws, the DOE will make records available which it is authorized to withhold under 5 U.S.C. § 522 whenever it determines that such disclosure is in the public interest." 10 C.F.R. § 1004.1. HOWEVER, given that the deliberative process privilege is a privilege based upon public policy (i.e. to protect decision making and avoid public confusion) it is unlikely that this policy would support the release of most drafts. In fact, I pulled a DOE decision on a FOIA appeal regarding a drafts and found this to be the case.(Case No. VFA-0558, 27 DOE 80,270).

Gavin S. Gilmour  
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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.



## U. S. ELECTION ASSISTANCE COMMISSION

1225 New York Avenue, NW, Suite 1100  
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*The purpose of this document is to provide a broad overview of the trade secrets and commercial and financial information exemption of the Freedom of Information Act (FOIA) (Exemption 4). The document should be a useful tool in responding to FOIA request. It should also serve as a helpful reference during the creation of the EAC's Voluntary Voting System Certification Program. The certification program should be created with the understanding that the EAC has an interest, legal obligation and responsibility to protect certain proprietary information. Such forethought will make for a more efficient and compliant program in the long run. Please note that this document is a simple overview and should not serve as a replacement for legal counsel, independent research and cases by case—fact specific—analysis.*

### Exemption 4 of FOIA

The Freedom of Information Act (5 U.S.C. §552(b)(4)) provides for the release of documents to the public upon proper request. The statute does, however, exempt certain documents from release. One such exemption, Exemption 4, protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." This exemption serves to protect both the government and persons who provide information to the government. It does this by ensuring that the government will be able to obtain complete, accurate and useful information and safeguarding those who provide such information from competitive harm.

Generally, FOIA Exemption 4 is viewed in two parts or categories: (1) trade secrets and (2) commercial or financial information. If a document meets the definition of a trade secret no additional inquiry is necessary, it is exempt from the requirements of FOIA.<sup>1</sup> If a document is not a trade secret, it must be reviewed to determine if it is commercial or financial information which is privileged or confidential. This requires an involved analysis under standards set by the courts.<sup>2</sup> Ultimately any determination that Exemption 4 of FOIA applies to a request for information, will require that the information be withheld. This is because the Trade Secrets Act (18 U.S.C. §1905), a criminal statute prohibiting the release of certain information by the government, has been read as coextensive with Exemption 4.<sup>3</sup> Thus, in practice, there may be no discretionary release of materials covered by Exemption 4.

### Trade Secrets

The term "trade secrets" is not defined in FOIA and has different meanings under the common law. The courts have determined that in the FOIA context, the term trade secrets should be defined

<sup>1</sup> Public Citizens Health Research Group v. Food and Drug Administration, 539 F.Supp 1320, 1325 (D.D.C 1982).

<sup>2</sup> National Parks & Conservation Association v. Morton, 498 F.2d 765 (D.C.Cir.1974), and refined in National Parks & Conservation Association v. Kleppe, 547 F.2d 673 (D.C.Cir.1976), and Gulf & Western Industries v. United States, 615 F.2d 527 (D.C.Cir.1979).

<sup>3</sup> CNA Fin. Corp. v. Donovan, 830 F.2d 1132 (D.C. Cir. 1987).

narrowly. For the purpose of FOIA Exemption 4, the term has been defined “as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.”<sup>4</sup> Ultimately, trade secrets information “relates to the productive process itself.” It deals with information describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.<sup>5</sup>

## Commercial or Financial Information

Exemption 4 of FOIA provides that documents containing information that is “commercial or financial” may be withheld if it was obtained from “a person” and is “privileged or confidential.”<sup>6</sup> First, the terms “commercial” and “financial” should be given their ordinary meaning. As such, the terms may be read broadly and include records in which a submitter has any *commercial interest*.<sup>7</sup> As for the term “person,” it is also read broadly. The FOIA phrase “obtained from a person” encompasses a wide range of entities, including: corporations and state governments who provide information to the government.<sup>8</sup> This leaves the more complex determination of whether information is privileged or confidential.

The standard for determining whether information is confidential depends upon whether its submission to the government was voluntary or required. Information given to an agency voluntarily is provided greater protection from release. Such information is categorically protected if it is NOT customarily disclosed to the public by the submitter.<sup>9</sup> Case law and Department of Justice guidance dictate that determining whether a submitter voluntarily provided information is not based upon the nature of their participation in the activity, but whether the information was required if they chose to participate.<sup>10</sup> Thus, despite the fact that the EAC’s voting system certification program will be “voluntary,” it is likely that the documents which vendors provide will be required by the EAC as a condition of participation.

Information required to be submitted to an agency is confidential if its disclosure is likely to produce either of the following effects: (1) impair the government’s ability to obtain necessary information in the future (“impairment prong”) OR (2) cause substantial harm to the competitive position of the submitter (“competitive harm prong”).<sup>11</sup>

### Impairment Prong.

Looking first to the impairment prong, in the context of required information, the government’s ability to collect needed information will be impaired when disclosure under FOIA would result in a

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<sup>4</sup> Public Citizens Health Research Group v. Food and Drug Administration, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

<sup>5</sup> Center for Auto Safety v. National Highway Traffic Safety Administration, 224 F.3d 144, 151 (D.C. Cir. 2001).

<sup>6</sup> Gulf, 615 F.2d at 529.

<sup>7</sup> Public Citizens Health Research Group, 704 F.2d at 1290.

<sup>8</sup> Flight Safety Services v. Dep’t of Labor, 326 F.3d 607, 611 (5<sup>th</sup> Cir. 2003) (Business entities) and Hustead v. Norwood, 526 F. Supp. 323, 326 (S.D. Fla. 1981) (state governments).

<sup>9</sup> Critical Mass Energy Project v. NRC, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>10</sup> Department of Justice, *Freedom of Information Act Guide*, Exemption 4, Applying Critical Mass (May 2004) (See guidance and various case law cited therein.)

<sup>11</sup> National Parks & Conservation Association, 498 F.2d at 770.

diminution of the *reliability* or *quality* of the required submissions.<sup>12</sup> Such a determination by the Government requires a finding that impairment would be significant,<sup>13</sup> this requires the rough balancing of the extent of impairment with the public's interest in disclosure.<sup>14</sup> This should be considered a high standard. Moreover, such impairment seems unlikely in the certification context, where the reliability and quality of the information provided will be independently determined and provided by an EAC accredited testing laboratory. Furthermore, a lapse in the reliability or quality of information is less likely when a submitter's certification may depend upon such factors.

### Competitive Harm Prong

Looking next to the competitive harm prong, required information is confidential if its release "is likely... to cause substantial harm to the competitive position of the person from whom the information was obtained."<sup>15</sup> This harm is focused on that harm "flowing from the affirmative use of proprietary information by competitors," rather than any competitive injury such as that harm associated with angry customers or employees.<sup>16</sup> Before an agency may make a determination regarding the release of information that might cause competitive harm, it must provide the submitter with an opportunity to share its views. This coordination is required by Executive Order 12,600. Coordination with the submitter does not relieve the agency of its responsibility to make a final, independent determination. Ultimately, any determination of competitive harm is highly fact sensitive. The same types of information have been found releasable or not releasable depending on other surrounding facts.

### Additional Criteria for Confidentiality ("The Third Prong")

The Courts have held that the impairment and competitive harm prongs laid out in case law are not "the exclusive criteria for determining confidentiality." The key issue is whether the release of information will harm an "identifiable private or government interest which the Congress sought to protect by enacting Exemption 4."<sup>17</sup> Specifically, courts have found records that are "intrinsically valuable" meet this definition and should not be release. This includes records that are themselves valuable commodities sold in the marketplace.<sup>18</sup>

### **Summary Tool**

The below is a graphic summary of the information provided above. It may be used to assist individuals in the decision making process. All decision regarding the release of materials should be make on a cases by case basis after due consideration of the facts and law.

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<sup>12</sup> Critical Mass, 975 F.2d at 878 and see Department of Justice, *Freedom of Information Act Guide*, Exemption 4, Impairment Prong of National Parks Test (May 2004) (See guidance and various case law cited therein.)

<sup>13</sup> Such a determination usually requires the agency to contact the submitter and have them make a statement regarding their practice.

<sup>14</sup> Washington Post Co. v. HHS, 690 F.2d 252, 269 (D.C. Cir. 1993)

<sup>15</sup> National Parks & Conservation Association, 498 F.2d at 770.

<sup>16</sup> Public Citizens Health Research Group, 704 F.2d at 1291.

<sup>17</sup> 9 to 5 Organization for Women Office Workers v. Board of Governors of the Federal Reserve System, 721 F.2d 1, 10 (1<sup>st</sup> Cir. 1983).

<sup>18</sup> Department of Justice, *Freedom of Information Act Guide*, Exemption 4, Third Prong of National Parks (May 2004) (citing FOIA Update, Vol. VI, No 1, at 3-4 and Vol. IV, No. 4 at 3-4).



- I. In order to determine if a document is protected from release under Exemption 4 of FOIA, you must first ask whether meets the definition of a Trade Secret.

**Trade Secret:** A secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end product of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

**EXAMPLES**

<u>Trade Secret</u>	VS.	<u>Not a Trade Secret</u>
<ul style="list-style-type: none"> <li>➤ Plans, schematics and other drawings useful in production.</li> <li>➤ Specifications of material used in production.</li> <li>➤ Source code used to develop software where release would reveal actual programming.</li> <li>➤ Technical descriptions of the manufacturing processes, quality control methodology and other information directly related to production.<sup>19</sup></li> <li>➤ Test results (compliance testing) performed on <u>unfinished</u> products.</li> </ul>		<ul style="list-style-type: none"> <li>➤ Information pertaining to a finished product's capabilities or features.</li> <li>➤ Information regarding a finished product's performance (including testing results of an end product).</li> <li>➤ Information regarding product components that would not reveal any commercially valuable information regarding production.</li> </ul>

- II. If a document does not contain a "Trade Secret," you must determine whether the information is protected as commercial or financial under FOIA Exemption 4. This involves a three part test. Information must meet each part of this test to be withheld under Exemption 4.

**Test.** Exemption 4 also covers information that is (1) obtained from "a person," (2) commercial or financial and (3) is "privileged or confidential."

*(A) The first two elements of the test are the most simple to apply. Exemption 4 requires information to have been obtained from a "person" and be "commercial or financial" in nature.*

**Person.** The term "person," is read broadly and includes corporations and state governments.

**AND**

**Commercial and Financial.** The terms are given their ordinary meaning and read broadly. They include records in which a submitter has any *commercial interest*.

<sup>19</sup> In compliance testing, where a product awaited marketing approval from the FDA, a court has found the product to be **NOT FINISHED**—and the testing a Trade Secret.

*(B) Next the information must meet the more complicated third part of the test, it must be privileged or confidential. This requires yet another series of analysis.*

*1. Was the information required or provided voluntarily?*

**Voluntary or Required?** Information given to an agency voluntarily is provided greater protection from release. Most information provided the EAC via its certification program will not be voluntarily provided (despite the voluntary nature of the program), because it was most likely provided as a condition of participation. If this is not the case, the information may be withheld if it is not customarily released by the submitter. Such a determination should involve a statement from the submitter and an analysis of the relevant community practices.

*2. If the information was required, would release (i) impair the government's ability to obtain necessary information in the future ("impairment prong") OR (ii) cause substantial harm to the competitive position of the submitter ("competitive harm prong")? If either of the below is true than the information may be considered confidential.*

**Impairment Prong**

The government's ability to collect needed information will be impaired when disclosure under FOIA would result in a diminution of the reliability or quantity of the required submissions. The impairment **MUST BE SIGNIFICANT**. This is a high standard, unlikely to apply to certification.

**OR**

**Competitive Harm Prong**

Release would likely cause substantial harm to the competitive position of the submitter. The harm at issue must come from the use of proprietary information BY COMPETATORS. This is a fact specific analysis.

*3. If the release of information that may cause competitive harm is contemplated, the submitter must be contacted.*

**Contact Requirement.** Before an agency may make a determination regarding the release of information that might cause competitive harm, it must provide the submitter with an opportunity to share its views. This does not relieve the agency of its responsibility to make the final, determination. This action is required by Executive Order.

**FACA QUICKIE**

GENERAL

1. Federal Advisory Committees (FACs) are entities that provide guidance to Federal agencies. They are heavily regulated. There is the Federal Advisory Committee Act (FACA), a FACA regulation published by GSA, and relevant Executive Orders. You are collecting, maintaining and managing information on behalf of your commissioner who serves as an EAC Designated Federal Officer.

*Designated Federal Officer ("DFO")*, means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO. The DFO shall:

- (a) Approve or call the meeting of the advisory committee or subcommittee;
  - (b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;
  - (c) Attend the meetings;
  - (d) Adjourn any meeting when he or she determines it to be in the public interest; and
  - (e) Chair the meeting when so directed by the agency head.
2. All EAC FACS are mandated by Congress via HAVA. Thus they are non-discretionary committees.

*Non-discretionary advisory committee* means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

3. An agency should also have a *Committee Management Officer* (I am not sure if we do). They are responsible for ensuring FACA policies and records are maintained Agency-wide.
4. EAC is also required to have guidelines on managing FACAs. We do not... yet....

DOCUMENTATION:

1. *Advisory committee records*. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29-33,

and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234),

2. Documentation and consultation with the FACA Secretariat (GSA) was originally required when our FACs were created and drafted their Charter. To the extent we have this documentation; it should be sought, gathered and maintained.
3. At a minimum, we need to find copies of the FACA Charters, Bylaws and changes thereto. We also need to maintain accurate lists of all FACA members. Finally, all FACA meetings are required to be reduced to minutes. We must maintain all of these minutes.
4. Must maintain copies of all documents provided to or produced by the FACA.

Subject to section 552 of title 5, United States Code, **the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee** shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist."

## 5. Reports

*Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with § 102-3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Government wide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304-GSA-AN.

*Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

*Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed

meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified § 102-3.70(a)(3).

## PUBLISHING MEETINGS.

We are required to publish an announcement of a FACA meeting in the Federal Register 15 day in advance of the meeting. **THUS BEFORE (AT LEAST 4 WORKING DAYS BEFORE) THE 15 DAY DEADLINE YOU NEED TO PROVIDE BRYAN WHITENER AND COUNSEL SPECIFIC INFORMATION ABOUT THE MEETING. If any part of the meeting is to be closed to the public this needs to be discussed with counsel in advance.** FACA requires the following info:

### **How are advisory committee meetings announced to the public?**

- (a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:
- (1) The name of the advisory committee (or subcommittee, if applicable);
  - (2) The time, date, place, and purpose of the meeting;
  - (3) A summary of the agenda, and/or topics to be discussed;
  - (4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
  - and (5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.
- (b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.



U. S. ELECTION ASSISTANCE COMMISSION  
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*The purpose of this paper is to provide background and make recommendations regarding the procedure for certifying or decertifying a voting system under the EAC's proposed voluntary voting system certification program. The document focuses on the fundamental requirements of due process in the context of this program.*

## BACKGROUND

EAC's voluntary voting system certification program will provide vendor's the opportunity to have their voting systems tested and ultimately certified by the Federal government. This program is strictly voluntary.<sup>1</sup> The Federal government places no restrictions or requirements nor grants any privileges regarding the sale or operation of voting systems on the basis of its certification. However, states may condition the use of such systems on the receipt of an EAC certification. Thus, at some level, voluntary EAC accreditation may impact the ability of a voting system manufacturer to sell its product. The question is whether or not this impact is proximate enough to trigger due process requirements and what these requirements would be. To start this analysis one must first look to the relevant law. The two principle authorities to consider are (1) the Administrative Procedures Act (APA) and (2) Due Process under the 5<sup>th</sup> Amendment to the U.S. Constitution (Due Process).

**The APA.** The APA sets forth procedural requirements for rule making, adjudication and licensing.<sup>2</sup> It is improbable that a court would find that these APA provisions apply to the EAC's voluntary certification program. Congress (through HAVA) has specifically withheld rulemaking authority from the EAC in all areas impacting state or local governments, with one exception (dealing with the National Voter Registration Act).<sup>3</sup> Moreover, legislative rule making requires a specific statutory grant of authority.<sup>4</sup> As the EAC has not been given this authority, the rule making provisions of the APA cannot apply.

Similarly, the adjudication provisions of the APA (which deals with the process for formulating an order) are triggered only when such determinations are "required by statute to be determined on the record after opportunity for an agency hearing."<sup>5</sup> HAVA contains no such requirements with regard to certification determinations. Further, the APA's adjudication section specifically exempts from its coverage "proceedings in which

<sup>1</sup> Help America Vote Act of 2002, 42 U.S.C. §15301 *et seq.*

<sup>2</sup> 5 U.S.C. §§ 553, 554 and 558 (respectively). See also 5 U.S.C. §§ 556, 557, 558 (regarding prescribed procedures)

<sup>3</sup> HAVA, 42 U.S.C. §15329

<sup>4</sup> United States v. Storer Broadcasting Co., 323 U.S. 134 (1956).

<sup>5</sup> 5 U.S.C. §§ 554(a)

decisions rest solely on inspections, test or elections.”<sup>6</sup> This exemption arguably covers the proposed certification program which is based primarily on a test report.

Finally, the APA definition of license includes an “agency certificate... or other form of permission.”<sup>7</sup> This definition has been read liberally by the courts.<sup>8</sup> However, under the definition, a license must (at least) include some form of “permission.” Under HAVA, the recipient of a certification receives no benefit, access or right provided by the Federal government. Moreover, even if an EAC certification can be viewed as a license as defined by the APA, the statute requires that such a license be “required by law” before it applies. Again, there is no requirement under HAVA that a party hold an EAC certification to participate in any Federal program or receive any Federal benefit.

While the procedural provisions of the APA do not apply to the EAC’s Certification program, a review of the statute’s processes may be helpful in the program’s development. This review does not suggest that the EAC should or has made the APA applicable as a matter of policy. The following are a few APA provisions with some relevance to the EAC certification program.

1. In hearings a party is entitled to present his case by oral OR documentary evidence, to submit rebuttal evidence and confront the evidence against them.<sup>9</sup>
2. In applications for initial licenses an agency may adopt procedures for the submission of evidence in written form.<sup>10</sup>
3. The suspension or withdrawal of a license requires, (1) written notice by the agency of the facts that warrant the action and (2) the opportunity to demonstrate OR achieve compliance with all lawful requirements.<sup>11</sup>
4. A license of a continuing nature does not expire until a final agency determination has been made, if the licensee has timely filed an application for a renewal or a new license.<sup>12</sup>

**Due Process.** The Due Process clause states that “No person shall... be deprived of life, liberty, or property, without due process of law.” Any analysis under this provision must be twofold. First one must determine if government action will deprive a person of life, liberty or property to determine if due process is required. Next, one must determine “how much process is due.”<sup>13</sup> At this point we must answer the first question. Ultimately, the issue is limited to whether a voting system vendor has a property interest in the receipt, denial or loss of an EAC certification. As noted above, this is a complicated question. While an EAC certification allocates no rights, privileges or

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<sup>6</sup> 5 U.S.C. §§ 554(a)(3); *See also York v. Secretary of the Treasury*, 774 F.2d 417, 420-421 (10<sup>th</sup> Cir. 1985)

<sup>7</sup> 5 U.S.C. §§ 551(8) (see 5 U.S.C. §§ 554(9) for definition of “licensing”).

<sup>8</sup> *Horn Farms Inc. v. Veneman*, 319 F.Supp 2d 902 (N.D. 2005) (*citing North America v. Dept. of Transportation*, 937 F.2d 1427, 1437 (9<sup>th</sup> Cir. 1991)).

<sup>9</sup> 5 U.S.C. §§ 556(d)

<sup>10</sup> 5 U.S.C. §§ 556(d)

<sup>11</sup> 5 U.S.C. §§ 558 (c)

<sup>12</sup> 5 U.S.C. §§ 554(c)

<sup>13</sup> *Administrative Law Treatise*, Vol. II, pg 568, §9.3 Richard J Pierce, Jr. (Aspen Law and Business).

benefits, it is likely that states may tie such benefits to the Federal certification. Is this connection proximate enough to create a property interest in an EAC certification?

Ultimately, we do not need to settle this matter at this time. As a matter of policy, the EAC has determined that voting system manufacturers shall be given an opportunity to be heard in the certification process. While we do not find that constitutional due process applies, prudence dictates that if procedural rights are to be granted, they meet the minimum due process requirements.

## DUE PROCESS REQUIREMENTS

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”<sup>14</sup> “Due process is flexible and calls for such procedural protections as the particular situation demands.”<sup>15</sup> Using these principles, the Supreme Court developed a three factor balancing test to determine what type of process is due before the government can deprive a person or entity of a protected interest. Due process requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, as well as any value of adding additional safeguards; and (3) the Government's interest, “including the function involved and the fiscal and administrative burdens,” that additional procedural requirements would entail.<sup>16</sup>

Ultimately, a review and balancing of these factors indicate that an informal, written, pre-deprivation hearing (without additional post deprivation proceedings) is sufficient to meet due process. Looking at the first factor, the interest of voting system manufacturers is substantial (though somewhat tenuous). It is possible that the denial of system certification may impact a manufacturer's business interests by limiting the number of states in which they sell their system. However, the courts have affirmed an informal written hearing process in official actions effecting far more significant private interests. Such interests include disability benefits,<sup>17</sup> employment,<sup>18</sup> right to issue government insured mortgages,<sup>19</sup> and the deprivation of money.<sup>20</sup>

Further, the risk of erroneous deprivation is low and not significantly improved by adding additional safeguards (factor 2). Holding an oral informal or evidentiary hearing would add nothing to the process except cost. Consider the following: (1) The certification process is primarily an objective, technical and scientific one. Such

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<sup>14</sup> Mathews v. Eldridge, 424 U.S. 319, 333 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

<sup>15</sup> Id. at 334 (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).

<sup>16</sup> Id. at 335.

<sup>17</sup> See Mathews, 424 U.S. 319.

<sup>18</sup> See Foster v. Ripley, 645 F.2d 1142 (D.C. Cir. 1981) & Frumkin v. Kent State University, 626 F.2d 19 (6<sup>th</sup> Cir. 1980).

<sup>19</sup> Capitol Mortgage Bankers v. Cuomo, 222 F.3d 151 (4<sup>th</sup> Cir. 2000). See also Doolin Sec. Sav. Bank, F.S.B. v. FDIC, 53 F.3d 1395 (4<sup>th</sup> Cir. 1995).

<sup>20</sup> FDIC v. Bank of Coughatta, 930 F.2d 1122 (5<sup>th</sup> Cir. 1991) and Quivara Mining Co. v. NRC, 866 F.2d 1246 (10<sup>th</sup> Cir. 1989).



processes lend themselves to written communication.<sup>21</sup> (2) The certification process will be almost entirely a written procedure. It will be based primarily on a written test report. An oral proceeding will add little to the process. (3) Along these lines, the outcome of a certification does not depend upon the truth and veracity of witnesses, but technical data. Traditionally, oral hearings are called for when the veracity of witnesses are a key factor in the agency's decision.<sup>22</sup> (4) The parties at issue are well educated and sophisticated. Voting system manufacturers and the test labs they contract with are professional, highly qualified organizations in the business of developing and testing voting systems. They are quite capable of using the written process to make themselves heard.<sup>23</sup>

Finally, the public and government interests are best served through a written hearing procedure. The EAC is a small agency with limited means, manpower (23 fulltime employees) and resources. Offering an oral hearing each time a member of the voting systems manufacturing industry seeks certification of a new system or upgrades a system would be an overwhelming burden. Moreover, such a procedure would significantly slow the certification process. Often, prompt action is required to allow a voting system to be fielded in time for a Federal election. The timely holding of elections is a preeminent public concern.

## RECOMMENDED PROGRAM ELEMENTS

NOTE NEED TO ADD A SECTION REGARDING THE STANDARD OR REVIEW..

Ultimately, if we assume that voting system manufacturers have a property interest in the certification process sufficient to trigger due process, the analysis above concludes that a written pre-deprivation hearing process would provide the necessary procedural protections. An oral hearing is not required by law and, ultimately, would add little to the process, bar cost. The purpose of this final section is to recommend broad procedures that would define the written hearing process. Ultimately, the EAC's voting system certification program must be put forth such that it offers participants a meaningful opportunity to be heard at a meaningful time. The discussion will be split in two parts: a proposed process for (1) initial certification and (2) decertification.

**Initial Certification.** Initial certification is the process whereby the EAC makes a determination denying the certification of a voting system never before certified by the EAC. This would include the denial to certify such a system when paired with a new component or software modification (assuming such a pairing has not previously received an EAC certification). The following is a brief outline of this process.

1. Initial determination. Initial determination made regarding voting system (denial).
2. Notice. Notice of initial decision provided participant. This written notice would contain:

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<sup>21</sup> Mathews, at 345 – 346; see also York, 774 F.2d at 421.

<sup>22</sup> See Mathews, at 333 – 334 (see also Goldberg v. Kelly, 397 U.S. 254 (1970)).

<sup>23</sup> See Mathews at 345 – 346 (Physicians better able to communicate in writing than welfare recipients).

- a. Initial decision.
  - b. Reasons for the decision.
  - c. Access to the information that served as the basis for the decision.
  - d. An opportunity to cure.
  - e. An opportunity for respondent to be heard (right to request reconsideration).
3. Reconsideration. Participant is given the opportunity to be heard on the matter by the individual who made the initial determination. This opportunity would take place before the decision is final. This individual must have the authority to grant relief. Participant must be allowed:
  - a. Access the information that served as the basis for the initial decision (ideally provided during notice, above).
  - b. To present additional facts and information in written form.
  - c. To present a written argument responding to the initial decision.
  - d. To have their relevant submissions considered.
  - e. A reasonable deadline for submissions.
4. Agency Final Determination. Determination authority reviews the request for reconsideration and makes a Final Agency Determination.
5. Notice of Final Decision. Notice of Final Decision provided participant. This written notice would contain:
  - a. Final decision.
  - b. Reasons for the decision which specifically addresses the matters raised by participant during the reconsideration process.
  - c. Notice of appeal rights.
6. Appeal. Participant may request an appeal of the agency final decision. After a timely request for an appeal, the participant shall be allowed:
  - a. Access to all information that served as the basis for the initial and final decisions; including the previous decisions themselves and the information previously provided by participant ("the record").
  - b. Opportunity to provide additional, written arguments responding to the initial and final decisions.
  - c. A review of presented materials (by a different decision authority) with the power to grant relief.
  - d. A reasonable deadline for submissions.
7. Decision on Appeal. Appellate authority reviews the request for appeal and makes a Decision on Appeal.
8. Notice of Decision on Appeal. Notice of Decision on Appeal provided participant. The notice would contain.
  - a. Decision on Appeal.

- b. Reasons for the decision which specifically address the matters raised by participant during the appeal process.
- c. Notice that the decision is final.

**Decertification.** Decertification is the process in which the EAC revokes certification previously granted. Any EAC certification shall remain valid until such time as the decertification process has been completed. The following is a brief outline of this process.

1. Informal Investigation. Informal efforts by the agency upon receipt or discovery of information suggesting non-conformance. The end product is a memorandum of recommendation for or against the initiation of a Formal Investigation.
2. Formal Investigation. An official investigation into potential non-conformance. Initiated upon recommendation of informal investigation. Must be initiated by the Formal Investigation Authority.
  - a. Notice of Formal Investigation. Upon determination of the need for a formal investigation notice must be given the interested party. Notice shall include:
    - i. A description of the matter being investigated (with specificity).
    - ii. An opportunity to provide relevant information.
    - iii. A timeline for the investigation.
  - b. Report of Investigation (ROI). The end result of a Formal Investigation is an ROI. The ROI shall collect and analyze all relevant information. The report will either substantiate or unsubstantiate the non-compliance investigation. A copy of the report will be provided the interested party.
3. Notice of Non-Compliance (NNC). If the formal investigation is substantiated, the interested party shall receive a NNC. The notice will provide the interested party the following:
  - a. The ROI.
  - b. A Statement of Non-Compliance outlining the relevant non-compliance with specificity.
  - c. A statement informing the party that the EAC will make a determination regarding compliance.
  - d. Opportunity to Cure.
  - e. Opportunity to provide information in writing.
  - f. Opportunity to provide a written argument.
  - g. A reasonable deadline for submissions.
4. Determination of Compliance or Non-Compliance. The EAC must make a written compliance determination after consideration of the information, above. This written decision must address all relevant fact (including those submitted by the interested party).

- a. *Compliance*. In the event the relevant authority determines that a voting system is substantively or procedurally compliant, he or she will make a formal, written determination. This determination will be forwarded to the interested party.
  - b. *Non-compliance*. In the event the relevant authority determines that a voting system is substantively or procedurally non-compliant, he or she will make a formal, written determination. The official will send the interested party a Notice of Intent to Decertify.
5. Notice of Intent to Decertify. If non compliance has been determined, the interested party will receive a notice of intent to decertify. This notice will include:
  - a. Statement of the basis if decertification.
  - b. The ROI, and all other factual materials that serve as the basis for the decision.
  - c. Opportunity to cure.
  - d. Opportunity to submit additional written information.
  - e. Opportunity to present written argument.
  - f. A reasonable deadline for submissions.
6. Final Decision on Decertification. Notice of Final Decision provided participant. This written notice would contain:
  - a. Final decision.
  - b. Reasons for the decision which specifically addresses the matters raised by participant during the reconsideration process.
  - c. Notice of appeal rights.
7. Appeal. The interested party may request an appeal of the agency final decision. After a timely request for an appeal, the participant shall be allowed:
  - a. Access to all information that served as the basis for the initial and final decisions; including the previous decisions themselves and the information previously provided by participant ("the record").
  - b. Opportunity to provide additional, written arguments responding to the initial and final decisions.
  - c. A review of presented materials (by a different decision authority) with the power to grant relief.
  - d. A reasonable deadline for submissions.
8. Decision on Appeal. Appellate authority reviews the request for appeal and makes a Decision on Appeal.
9. Notice of Decision on Appeal. Notice of Decision on Appeal provided participant. The notice would contain.
  - a. Decision on Appeal.
  - b. Reasons for the decision which specifically address the matters raised by participant during the appeal process.

- c. Letter of decertification.
- d. Notice that the decision is final.

To: Julie Thompson-Hodgkins, General Counsel  
From: Tamar Nedzar, Law Clerk  
Date: March 3, 2006  
Subject: Proprietary Information in the Voting System Certification Process

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**BACKGROUND:**

Section 231 of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories. The vendors who participate in the testing and certification process are mainly private parties, many of whom are in competition with each other. However, the testing and certification process is an agency action subject to Freedom of Information Act (FOIA) requests. Therefore, the EAC wishes to develop and implement a policy consistent with FOIA that would protect private and proprietary information from public dissemination.

**FOIA**

FOIA requires that each agency publish in the Federal Register descriptions of its central organization and methods by which the public may obtain information. In addition, each agency must provide (1) a description of all formal and informal procedures available, (2) rules of procedure, (3) the location of forms, (4) instructions for forms, (5) substantive rules of general applicability, and (5) statements of general policy or interpretations of general applicability formulated and adopted by the agency.<sup>1</sup>

Once the agency receives a FOIA request, the agency is required to determine within twenty days whether to comply with the request. Once the agency decides whether to comply with the request, it must immediately notify the requester of its decision,

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<sup>1</sup> 5 U.S.C.A. § 552(1) (1996)

including reasons for the determination. The determination of whether to comply with the request is within the agency's discretion, but each agency must do due diligence to disclose as much information as possible. If the decision is to deny a request, the requester must be allowed to appeal to the head of the agency. Responses to appeals must be made within twenty days of the appeal.<sup>2</sup> If the agency will be unable to comply with the request within the prescribed time limits because of unusual circumstances, it may extend the time limits by written notice only.<sup>3</sup> The agency is also required under FOIA to promulgate regulations pursuant to notice and comment for the expedited processing of requests.<sup>4</sup>

FOIA also requires each agency to promulgate regulations, including a notice and comment period, detailing the fees that may be associated with a FOIA request. Although fees should be limited to reasonable standard charges for searching, duplication, and review, if records are requested other than for commercial use, the fees should be lowered to the extent feasible.<sup>5</sup> Any fees that the agency charges may not be requested in advance unless the requester has previously failed to pay fees in a timely fashion. The total amount the agency charges cannot exceed \$250.<sup>6</sup>

Since the purpose of FOIA is to make government action more transparent, the Act is meant to include as much information as possible. To that end, Congress has provided for only 9 exceptions to the rule requiring agency disclosure.<sup>7</sup> Unless otherwise specified in the Act or superseded by another statute<sup>8</sup>, each agency is required to provide

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<sup>2</sup> 5 U.S.C.A. § 552(a)(6) (1996)

<sup>3</sup> 5 U.S.C.A. § 552(a)(4)(B)(i) (1996)

<sup>4</sup> 5 U.S.C.A. § 552(a)(4)(E)(i) (1996)

<sup>5</sup> 5 U.S.C.A. § 552(a)(4)(A)(i) (1996)

<sup>6</sup> 5 U.S.C.A. § 552(a)(4)(A)(v) (1996)

<sup>7</sup> 5 U.S.C.A. § 552(b)(1-9) (1996)

<sup>8</sup> For example, the Trade Secrets Act, 18 U.S.C.A. § 1905 (2000)

as much information as possible to a requestor. The information can be transmitted in any reasonable form the requester indicates, and fees must be tailored to the kind of media used to send information.<sup>9</sup> For example, the agency may reasonably charge for photocopies, but may not charge for duplication if information is sent via email.

### **EAC Certification Process**

The EAC's proposed testing and certification process requires vendors to submit their technical data package (TDP) to the EAC, which then assigns the product an application number and develops a test plan. Once the test plan has been established, EAC Technical Review Consultants (TRC) will review the test plan, and approve or disapprove of it. If approved, the system is tested at a Voting System Test Laboratory (VSTL). Next, the TRC reviews the test report and submits approval or disapproval with a recommendation. The EAC Certification Committee then reviews the results and issues documented interpretation for the public record.

### **NONDISCLOSURE OF CONFIDENTIAL INFORMATION:**

Under 5 U.S.C.A. § 552(b)(4) ("Exemption 4"), an agency may not disclose trade secrets and commercial or financial information obtained from a person if the information is privileged and confidential. The purpose of Exemption 4 is to protect the confidentiality of information submitted to the government. However, the purpose of the FOIA is to make government as transparent as possible. Therefore, in deciding what proprietary information it will exempt from responses to FOIA requests, an agency

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<sup>9</sup> 5 U.S.C.A. § 552(a)(3)(B) (1996)



should err on the side of disclosure and construe the exemption narrowly in accord with previous court interpretations.<sup>10</sup>

Traditionally, the determination of whether information qualifies for Exemption 4 is twofold. If the government compels the submission of information regarding trade secrets or commercial or financial information, the information will be considered confidential under Exemption 4 if the government can show that disclosure will not (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the submitter.<sup>11</sup> In all cases where an agency claims that information fits into an exception, the government has the burden of providing sufficient specificity and justifications for its decision<sup>12</sup>.

#### **Government's Ability to Obtain Future Information**

The government's ability to obtain necessary information in the future is impaired when disclosure would induce private parties making submissions to exclude (a) innovative ideas<sup>13</sup> or, (b) information necessary for the agency to fulfill its mandate<sup>14</sup>.

In *Orion Research, Inc. v. Environmental Protection Agency*<sup>15</sup>, the Supreme Court upheld EPA's decision not to disclose technical information in proposals for a government contract, finding that such disclosure would impair the government's ability to obtain information in the future because it would make potential bidders less likely to disclose novel ideas. The Court further held that the agency is in the best position to determine the effect of disclosure on its ability to obtain necessary technical

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<sup>10</sup> See *Bristol-Meyers Co. v. Federal Trade Com.*, 424 F.2d 935 (US App DC 1970)

<sup>11</sup> See *Judicial Watch, Inc. v. U.S. Dept. of Commerce*, 337 F.Supp. 2d 146 (D.D.C. 2004).

<sup>12</sup> See *Neely v. FBI*, 208 F.3d 461 (4<sup>th</sup> Cir. 2000).

<sup>13</sup> See *Orion Research, Inc. v. Environmental Protection Agency*, 449 US 833 (1980).

<sup>14</sup> See *Comstock International, Inc. v. Export-Import Bank*, 464 F. Supp. 804 (D.D.C. 1979).

<sup>15</sup> 449 US 833 (1980).

information.<sup>16</sup> Consequently, a private party that submits information to an agency cannot argue on behalf of the government that the agency would be impaired.<sup>17</sup> Finally, an agency's assessment of whether its ability to gain information would be impaired in the future is quintessentially a managerial judgment not subject to judicial review.<sup>18</sup>

Similarly, in *Comstock International, Inc. v. Export-Import Bank*<sup>19</sup>, a FOIA requester sought disclosure of documents pertaining to an international loan made by the agency. The court recognized that there was no risk of impairing the agency's ability to obtain this sort of information in the future, since, as a lender, it would always have direct access to loan-related documents. However, noting that commercial banks and borrowers were reluctant to negotiate loan agreements with the agency absent assurances of confidentiality, the court held that disclosure would interfere with the agency's ability to promote United States exports, which was an essential part of its mandate<sup>20</sup>.

Similar to the situation in *Orion*, if the EAC were to disclose certain information vendors submit in their TDPs (specifically unique technical data), it might make vendors less likely to supply necessary information in the future and thereby inhibit the EAC's ability to obtain the information in the future. Also, like the situation in *Comstock*, the EAC is statutorily required to establish a certification process. If it discloses technical or financial information that vendors submit to the agency, the EAC may be in a position where such disclosure would limit its ability to satisfy its mandate. Therefore, the EAC should treat technical and financial data submitted by vendors as confidential to avoid inhibiting the attainment of similar information in the future or fulfilling its mandate.

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<sup>16</sup> See *Orion Research, Inc. v. Environmental Protection Agency*, 449 US 833 (1980).

<sup>17</sup> *Id.*

<sup>18</sup> See *General Electric Co. v. United States Nuclear Regulatory Com.*, 750 F.2d 1394 (U.S. App. 1984).

<sup>19</sup> 464 F. Supp. 804 (D.D.C. 1979).

<sup>20</sup> *Id.*

### Harm to Submitter's Competitive Position

The government's disclosure of information causes harm to the submitter's competitive position when (a) such disclosure could allow competitors to underbid or undercut the submitter<sup>21</sup>, and (b) the information disclosed is not publicly available elsewhere<sup>22</sup>.

In *Lion Raisins v. U.S. Dept. of Agriculture*<sup>23</sup>, the 9<sup>th</sup> Circuit upheld the Department of Agriculture's decision not to disclose Line Check Sheets related to USDA raisin inspections conducted at appellant's competitors' facilities. The court found that the agency's decision was reasonable because disclosure of appellant's competitors' information would allow appellant to infer the volume of competitors' sales. Sales data would in turn allow appellant to use the information to underbid its competitors in future transactions with public and private entities<sup>24</sup>.

By contrast, in *Continental Stock Transfer & Trust Co. v. SEC*<sup>25</sup>, a corporation requested that the SEC treat the information they submitted in an application for registration as transfer agents confidentially. The SEC denied the request, claiming that the information was not confidential and was therefore subject to disclosure in a FOIA request. The court agreed, holding that the applicant's information was subject to disclosure since 95% of the information contained in the application was already available to the public through commercial publications. Therefore, disclosure could not be said to cause substantial competitive harm to the applicants<sup>26</sup>.

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<sup>21</sup> See *Lion Raisins v. U.S. Dept. of Agriculture*, 354 F.3d 1072 (9<sup>th</sup> Cir. 2004).

<sup>22</sup> See *Continental Stock Transfer & Trust Co. v. SEC*, 566 F.2d 373 (2d Cir. 1977).

<sup>23</sup> See 354 F.3d 1072 (9<sup>th</sup> Cir. 2004).

<sup>24</sup> See 354 F.3d 1072 (9<sup>th</sup> Cir. 2004).

<sup>25</sup> See 566 F.2d 373 (2d Cir. 1977).

<sup>26</sup> *Id.*

Similar to the circumstances in *Lion Raisins*, if the EAC were to disclose technical data or financial information, it might enable the submitting vendors' competitors to use the information to underbid them in selling voting systems to the states. Disclosing technical data especially might allow competitors to modify their own systems to be more competitive. Finally, unlike the situation in *Continental Stock*, since the information vendors submit will likely not be available publicly through other means, the EAC's disclosure of technical or financial information might subject submitting vendors to unforeseen harms. Therefore, the EAC should classify technical and financial information as confidential to avoid exposing submitting vendors to potential harm.

**CONCLUSIONS:**

Section 231 of HAVA requires the EAC to provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories. During this process, private corporations will be submitting a technical data package (TDP) to the EAC. Each vendor's TDP will likely contain information unique to the submitter. The TDP will be used by Technical Review Consultants (TRC), and the Voting System Test Laboratory, after which the TRC will submit approval or disapproval of each system with a recommendation.

Once the EAC establishes its testing procedures, interest groups, corporations, and private persons may make FOIA requests about the EAC's certification process. It is likely that disclosure of either coding information or financial information would cause substantial competitive harm to the submitter *and* inhibit the EAC's ability to obtain similar information in the future as required by its mandate. In responding to such requests, the EAC should disclose enough information to comply with FOIA's broad

mandate to make government more transparent, while not inhibiting its ability to get similar information in the future or causing harm to the vendors. **Accordingly, the EAC should:**

- **Only Disclose Non-Unique Data:** Any data that is unique to the vendor should not be disclosed to the public in a FOIA request. Data the EAC should identify as unique includes, but is not limited to, computer coding, technical platform data, security encryption, and data encoding practices. In addition, any financial information a vendor submits to the EAC should be redacted before responding to a FOIA request.
- **Issue Public Rules:** Since FOIA is intended to make government more transparent, it is advisable that the EAC adopt, by notice and comment, rules clearly delineating what information the EAC will and will not disclose concerning the voting system certification process. These rules will serve the dual purposes of (1) giving vendors notice before they make submissions, and (2) enabling potential vendors to participate in the rule-making process. In addition, issuing rules should lower the likelihood that a vendor would challenge an EAC decision in the future since vendors were invited to participate in the rulemaking.
- **Clearly Identify Confidential Vendor Data:** After establishing clear guidelines concerning confidential information, the EAC should mark each document a vendor submits as part of the certification process either confidential or not confidential, depending on the content of the document. This process should be internal, and a vendor's marking something confidential should not have any bearing on the EAC's decision to treat something as confidential or not.

- **Inform Vendors Upon Submission:** The EAC should, in response to any submission by a vendor, respond by sending a one-page summary of the EAC's policies regarding disclosure of information to FOIA requesters. This will provide vendors with additional notice and should inform their future submissions.
- **Classify Documents When Submitted or Created:** Given the EAC's small staffing level, and because the EAC has 20 business days to respond to requests, it is imperative that the EAC classify documents as they come in or are created to lower the administrative burden of responding to FOIA requests. During the certification process, the EAC should, for each document submitted or created, classify it as (1) confidential/needs redaction, (2) public, or (3) internal<sup>27</sup> to make responding to FOIA requests more efficient.

#### **ADDITIONAL RECOMMENDATIONS:**

##### **I. The EAC Is Required by Law to Publish FOIA Guidance in the Federal Register**

FOIA requires that every agency subject to the Act make certain information available to the public.<sup>28</sup> Accordingly, the EAC must publish in the Federal Register:

- Descriptions of its central and field organization and established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

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<sup>27</sup> Under 5 U.S.C.A. § 552(b)(5) (1996), interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency are exempt from FOIA requests.

<sup>28</sup> See 5 U.S.C.A. § 552(a)(A-E) (1996)

- Statements of general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.
- Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.
- Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

## **II. The EAC Is Required by Law to Adopt a Fee Structure**

FOIA requires that every agency subject to the Act adopt and publish a fee structure applicable to the processing of requests and procedures and guidelines for determining when such fees should be waived or reduced<sup>29</sup>. Accordingly, the EAC must publish in the Federal Register:

- A comprehensive fee structure for incoming requests, including the EAC's classification of requesters and the appropriate reductions or waivers available to each classified group.
  - The fee structure shall provide for the recovery of direct costs only for the following: (1) search, (2) duplication, or (3) review. \*Review costs may not include the costs incurred in resolving issues of law or policy that may be raised in the course of processing a FOIA request.

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<sup>29</sup> See 5 U.S.C.A. § 552(a)(4)(A)(i) (1996). See FEC's FOIA regulations (11 C.F.R. 4.1-4.9) for a comprehensive example.

- The EAC may not require advance payment of fees unless a requester has previously failed to pay fees in a timely fashion, or the EAC has determined that the cost of retrieving the requested information will exceed \$250.
- Guidelines and procedures for making a FOIA request, including:
  - Where forms are available to requesters. Each form should (1) indicate that the EAC needs requests to be as specific as possible, (2) ask that the requester classify itself in one of the categories established in the fee structure regulations, (3) ask for the requester's contact information, and (4) ask for the medium in which the requester would like information.
  - The EAC's policies for disclosure of information. The policies should clearly indicate how the EAC determines what information is exempt from FOIA requests and the reasons why EAC may choose not to disclose (eg. Confidential, internal, etc.).
  - Statutorily-mandated timelines and exceptions for unusual circumstances.
  - Procedures for appealing an EAC decision to not disclose information, including contact information, the appeals process provided for in FOIA, and any other internal policies the EAC adopts in accord with FOIA's express provisions.

### **III. The EAC Should Implement an Internal FOIA Request Tracking Mechanism**

As the EAC grows, it is likely that the number of FOIA requests the agency receives will also increase. Accordingly, the EAC should the following internal policies to expedite the resolution of FOIA requests:

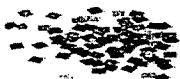


- The EAC should issue a tracking number to each FOIA request by fiscal year. For example, the first request in fiscal year 2006 would be numbered 0601.
  - Each request should be date-stamped when received. Requests received after 1 PM should be date-stamped the next business day.
  - Each request should be date-stamped the date the EAC is required by law to respond to the request (20 business days unless unusual circumstances).
- The EAC should allow for one business week during the processing of FOIA requests for the legal department to review all documents the EAC plans to disclose.
- The EAC should, for each document submitted to the agency or created by the agency, classify it as (1) confidential/needs redaction, (2) public, or (3) internal<sup>30</sup> to make responding to FOIA requests more efficient.

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<sup>30</sup> Under 5 U.S.C.A. § 552(b)(5) (1996), interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency are exempt from FOIA requests.

Attorney-Client  
Privilege



Tamar Nedzar/EAC/GOV

08/15/2006 12:28 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

bcc

Subject PRA question

This is how I propose responding to Kim Brace's question about what PRA covers.

The Paperwork Reduction Act (PRA) requires Federal agencies to, prior to collecting information, submit an Information Collection Request to the Director of the Office of Management and Budget, publish notice in the Federal Register, and incorporate public comments for any information collection of ten or more persons (See 44 USCS section 3501 et seq.). Accordingly, the EAC anticipates that completion of the focus groups will require compliance with PRA.

Julie and Karen, what do you think?

Tamar Nedzar  
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027710

Juliet E. Hodgkins/EAC/GOV  
03/28/2007 09:55 PM

To Rosemary E. Rodriguez/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC,  
bcc

Subject Re: Comments on Eagleton's response

I have not reviewed the various laws, but I believe that it would require that kind of review to answer your question accurately. My guess is that much like other election-related provisions, the language of the statute and the placement of the statute in the code or statutory scheme will dictate the answer to the question. Some may not even be written into statute. If you want me to, I can get someone to start working on that review.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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(202) 566-3100  
Rosemary E. Rodriguez/EAC/GOV

Rosemary E.  
Rodriguez/EAC/GOV  
03/28/2007 06:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
Subject Re: Comments on Eagleton's response

Julie, in your legal opinion, is stating one's name considered identification in the states where it is the threshold requirement?

Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 03/28/2007 06:19 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Jeannie Layson  
**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.

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Privilege

**Deliberative Process  
Privilege**

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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 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

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questions concerning my comments, I will be around tonight and will be available tomorrow afternoon by Blackberry.

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## RECOMMENDATIONS FOR FURTHER EAC ACTIVITY ON VOTER FRAUD AND INTIMIDATION

### Consultant Recommendations

- **Greatly expand the scope of individuals interviewed.** Time and resource constraints prevented the consultants from interviewing the full range of participants in the electoral process. As a result, we recommend that in the next phase of this project, further interviews be conducted. In particular, a greater sampling of state and local election officials from different parts of the country should be interviewed. These individuals have first hand information and experience in the operation of elections.

We also recommend that in the next phase interviews be conducted with people in law enforcement, specifically Federal District Election Officers (“DEOs”)<sup>1</sup> and local district attorneys and attorneys defending those accused of election crimes or civil violations. In many instances it is the local district attorney who will investigate election fraud and suppression complaints. Attorneys who defend people accused of election crimes will have a different perspective on how the system is working to detect, prevent, and prosecute election fraud.

- **Conduct Follow-Up Nexis Research.** 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 search terms, we

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<sup>1</sup> 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. *Department of Justice's Activities to Address Past Election-Related Voting Irregularities*: General Accounting Office, October 14, 2004, GAO-04-1041R

could not determine whether there was any action taken regarding the allegations, investigation or charges brought. Consequently, 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. We recommend that follow up Nexis research be conducted to establish what, if any, resolutions or further activity there was in each case.

We also believe that in the second phase of this project, there should be a sampling of local newspapers from around the country to analyze for articles on voter fraud and voter intimidation. This will lead to a better idea of problems that occur on city and county levels that are often not reported statewide.

- **Conduct follow-up research to the literature reviews.** 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, various interested parties frequently cite such reports and books as evidence of fraud or intimidation. Therefore, we recommend as a follow up to the literature review, an analysis of the resolution, if any, of specific instances of fraud and intimidation cited in the books and reports reviewed in the first phase.
- **Review a sampling of state district court cases.** In the first phase, we read and analyzed over 44,000 cases. Unfortunately, few of these were found to be on point. We therefore recommend that in the second phase, research should be concentrated on a national sampling of state district court level electoral cases. Often the district courts settle important issues that are not subsequently appealed. We believe that there could be a storehouse of information regarding vote fraud and intimidation in these cases.
- **Survey state election fraud and intimidation laws.** We recommend that there be a sampling of state electoral laws (including criminal penalty provisions), in order to aid in the development of model legislation that would address voter fraud and intimidation.
- **Review which states collect data on fraud and intimidation.** Evidently a few states, such as Arkansas and Georgia, collect and maintain data on complaints of fraud and intimidation and the disposition of those allegations at the state level. Phase two should examine what other states have such information and seek to obtain it for review and analysis. Policies and protocols on gathering such information in these states should also be looked at as possible models for the states that do not employ this practice.
- **Analyze data collected by various organizations in the 2006 election.** Several organizations, such as Election Protection, 1-800-MYVOTE1, and the parties will be setting up hotlines and sending people into the field during the upcoming mid-term elections both to assist voters and compile complete records of complaints and incidents from the period of voter registration through Election Day. Some of

these organizations have already agreed to share their data with the phase two EAC project consultants. We recommend that such data be used to the greatest extent possible to assess the incidence and the nature of the fraud and intimidation that occurred.

- **Obtain and analyze data retained by the Department of Justice.** Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice tracks complaints of voter intimidation in a variety of ways,<sup>i</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.
- **Obtain and analyze a sampling of DEO Reports.** 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 DEO 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 would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or kept confidential.
- **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.<sup>2</sup> 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.<sup>ii</sup>
- **Consult with an academic/academic institution with unimpeachable political science statistical research credentials.** Included in this report is a summary of

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<sup>2</sup> 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.



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.

- **Review and Assess Whether Current Federal Laws on Fraud and Intimidation are Adequate.** Finally, we recommend that phase two project researchers review federal laws 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 threats.

According to Craig Donsanto, long-time director of the Public Integrity Section of the Criminal Division of the 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>iii</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

The second phase of this project should examine if current laws can be revised or new laws drafted that would address voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as *something of tangible value in itself*. Such legislation would penalize all forms of voter intimidation, regardless of the motivation. The law would, *for example*, potentially cover letters and postcards with contain language meant to deter voters from voting and pre-Election and Election Day challenges that are clearly illegitimate.

In the alternative to finding a way to penalize such behavior, researchers might examine ways to deter and punish voter intimidation under 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 an unchecked pattern of repeated abuse; and organizations that intentionally engage in intimidating practices. Civil damage penalties and attorney fees should be included. Another, more modest measure, as has been suggested by Ana Henderson

and Christopher Edley,<sup>iv</sup> would be to bring fines for violations under the Voting Rights Act up to parity. Currently, the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

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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, 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>ii</sup> *Department Of Justice To Hold Ballot Access and Voting Integrity Symposium*: U.S. Department of Justice press release, August 2, 2005.

<sup>iii</sup> Craig C. Donsanto, *Prosecution of Electoral Fraud Under United States Federal Law*, IFES Political Finance White Paper Series, 2006, p. 29.

<sup>iv</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

## Working Group Recommendations

1. **Use the 2006 and/or 2008 elections as a laboratory by employing observers.** 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.

2. **Do a study on absentee ballot fraud.** 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.
3. **Use risk analysis methodology to study fraud.**<sup>1</sup> 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

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<sup>1</sup> See Appendix C, and section on methodology

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.

4. **Conduct research using a methodology of database comparison.** 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.
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 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.
6. **Study use of HAVA’s administrative complaint procedure to see if it can be used to measure some forms of fraud and intimidation.** 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.
7. **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 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.

## **Defining Election Fraud**

*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.*

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;
- 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.

## Key Working Group Comments and 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."



## Election Protection 2004

By the Election Protection Coalition

### **Election Protection – the Program**

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:

- 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.
- Distribution of more than five million "Voters' Bills of Rights" with state-specific information
- 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.
- 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 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.
- 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).

- 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.
- 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.

The Long Shadow of Jim Crow, People for the American Way and the National Association for the Advancement of Colored People

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. The most recent cases included in the report are the incident in which 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, which resulted in no showing of wrongdoing.

The report also points out that, "Over the past two decades, the Republican Party has launched a series of 'ballot security' and 'voter integrity' initiatives which have targeted minority communities. At least three times, these initiatives were successfully challenged in federal courts as illegal attempts to suppress voter participation based on race.

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.

## **The New Poll Tax: Republican-Sponsored Ballot-Security Measures are Being Used to Keep Minorities from Voting**

By Laughlin McDonald

McDonald 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.”

McDonald blames the federal government as well as the states for use of suspect ballot security programs. He cites the implementation of the U.S. Department of Justice’s in “Voting Integrity Initiative” in South Dakota as the worst example of a joint federal-state effort to prevent voter fraud. Alleged voter fraud only in counties with significant Native American populations was targeted. South Dakota Attorney General Mark Barnett “working with the FBI, announced plans to send state and federal agents to question almost 2,000 new Native-American registrants, many of whom were participating in the political process for the first time.” However, statistics show that these efforts only served to increase Native American voter participation. Native Americans “were targeted based on fraud allegations that proved to be grossly exaggerated; at the end of the investigation, only one Native American was even charged with a voting-rules violation.”

McDonald cites several other ballot security efforts that were really disguised attempts at minority voter suppression:

In Pine Bluff, Ark., Democrats accused Republican poll watchers of driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting. Democrats in Michigan charged that a plan by Republicans to station hundreds of “spotters” at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout. In South Carolina, a lawsuit filed the day before the election alleged that officials in Beaufort County had adopted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address. According to the complaint, a disproportionate number of those affected by the new rule would be African-American voters who lived in the rural areas of the county.

McDonald is also critical of the Help America Vote Act (HAVA). He states that HAVA “contains other provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security programs.” McDonald specifically attacks the photo ID requirement for anyone who registered by mail but has not previously voted. McDonald argues that the ID requirement will suppress minority voting because minorities are less likely than non-minorities to have a photo ID, a photo ID is expensive to obtain and all the alternatives to photo ID present similar obstacles to minority voters. He also argues that there is no evidence that photo ID will combat voter

fraud but it only really provides “another opportunity for aggressive poll officials to single out minority voters and interrogate them.”

McDonald lists some classic past ballot security efforts by the Republicans that have been abused: 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. This time the Department of Justice sued the Republican Party and Helm’s reelection committee, resulting in another consent decree prohibiting future ballot security programs without court approval.

McDonald indicates that the crux of the problem is lax enforcement of federal voters rights laws. He states, “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 Crawfordsville [Arkansas].”

McDonald concludes by stating that Congress and the states should adopt “nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”

An Evaluation: Voter Registration Elections Board: Wisconsin Audit Report 05-12:  
September 2005

The Joint Legislative Audit Committee of the Wisconsin Legislature required the Wisconsin Audit Report. The Report obviously does not include the 2006 statistics for statewide voter registration as required by HAVA. Wisconsin voter registration is required by statute in only 172 municipalities---those with populations of 5,000 or more. Another 167 smaller municipalities opted to maintain voter registration lists. Currently, 28.9 % of the voting-age population is not required to register before voting.

According to the Report, great variation was found in the implementation of existing voter registration laws. For example, 46 % of municipalities that responded to the survey did not send address verification cards to individuals who registered by mail or at the polls on Election Day in November 2004. Further, only 85.3 % of survey respondents reported updating their voter registration lists to remove inactive voters, as required by law.

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. The Report identified 105 instances of voting irregularities in six municipalities, including 98 ineligible felons who may have voted. The names of these individuals were forwarded to appropriate district attorneys for investigation.

Due to concerns about ineligible voting, stemming from the 2004 election, the Joint Legislative Audit Committee requested that voter registration procedures be evaluated. The following was investigated for this Report:

- \* voter registration requirements and the methods by which voters register, including requirements in other states;
- \* the address verification process, including the use of address verification cards to confirm the residency of those who register by mail or at the polls;
- \* procedures and practices for updating voter registration lists; and,
- \* the role of the Elections Board.

Wisconsin allows qualified electors to register in person, by mail, or with a special registration deputy before Election Day, and at the polls on Election Day. In municipalities where registration is required by statute, 20.3 % of Wisconsin voters registered at the polls on Election Day in November 2004. Municipal clerks rely on registrants to affirm their eligibility, including citizenship and age. However, requirements for providing identification or proof of residence vary depending on when an individual registers and by which method.



Address verification cards are the primary tool available to municipal clerks for verifying the residency of registered voters and detecting improper registrations by mail or at the polls. 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.

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.

Because of such inconsistencies, registration lists contain duplicate records and the names of ineligible individuals. For example, 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.

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.

Recommendations:

- \* adjusting the early registration deadline to provide clerks more time to prepare registration lists;

- \* establishing more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;

- \* establishing uniform requirements for demonstrating proof of residence for all registrants;
- \* providing municipal clerks with more flexibility in the use of address verification cards;
- \* Authorizing civil penalties for local election officials and municipalities that fail to comply with election laws; and,
- \* implementing mandatory elections training requirements for municipal clerks.

The Report also recognized that the new HAVA registration procedures would help with existing registration problems.

**Interview with Tony Sirvello, Executive Director, IACREOT**

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

Incidents of Election Fraud

Sirvello stated that one problem with election crimes is that they 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. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot.

If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their

names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

#### Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

#### Recommendations

District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.

There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

**Interview with Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice**

January 13, 2006

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 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

*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?*

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.

*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 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:

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 when there was a pattern or scheme to corrupt the process. 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.

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:

Felon voters in Milwaukee.

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. Double voters in a variety of jurisdictions.

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 Douglas Webber, Assistant Indiana Attorney General**

February 15, 2006

### Background

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

### Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

### Incidents of fraud and intimidation

Mr. Webber thinks that no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting--totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solve the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.



Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one, case absentee votes were exchanged for “a job on election day”---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

### Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General’s Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

### Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General’s Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- 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.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

**Interview Sharon Priest, former Secretary of State, Arkansas  
January 24, 2006**

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a drivers license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- 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.

- Undue challenges to minority language voters at the poll sites
- Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.

Suggested Reforms for Improvement:

- Nonpartisan election administration
- Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.

**Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians**

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

Nature of Suppression/Intimidation of Native Voters

Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

### Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

### Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

### Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter would come up with no ID, poll monitors would repeat “You can’t vote” over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can’t be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

### Vote Buying and Fraud

They haven’t found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily

unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

### Remedies

As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.

Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.

As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.

Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the absence of those resources, better absentee ballot procedures are needed.

Basic voter registration issues and access are also important in native communities and need to be addressed.

Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very

little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.



**Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.**

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

Regarding the August 2005 Report

ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud. He believes that it is very hard to come up with a measure of voter fraud short of prosecution. Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

Voting Problems

Mr. Torchinsky stated there were incidents of double voting---ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.

Mr. Torchinsky believes that voter ID would help, especially in cities in places like Ohio and Philadelphia, PA. The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems--(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places. He also believes that problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.

#### Suggestions

Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.

**Interview with Joe Rich, former Chief of the Voting Section,  
US Department of Justice  
February 7, 2006**

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring

The section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.

All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.

The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal “monitoring.” In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.

Processes for Cases not Resolved at the Polling Site

If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.

If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.

However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.

There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.

#### Types of Fraud and Intimidation Occurring

There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA's provisions, an election official can always look into a voter's registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.

The biggest problem is with absentee ballots. The photo ID movement is a vote suppression strategy. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.

The most common type of intimidation occurring is open hostility by poll workers toward minorities. It is a judgment call whether this is a crime or not – Craig Donsanto of PIN decides if it rises to a criminal matter.

Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.

Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations.

#### Recommendations

Congress should pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.

Given the additional resources and latitude given to the 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.

There should also be increased resources dedicated to expanded monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.

## **Interview with Justice Evelyn Stratton, Supreme Court of Ohio**

February 17, 2006

### The 2004 Election

Justice Stratton stated that usually in the period right before an election filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).

### General Election Fraud Issues

Justice Stratton has seen very few fraud cases in Ohio. Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

Justice Stratton claimed she knew of isolated incidences of fictitious voter registration but these were not prosecuted. She has not seen any evidence of ballots being stuffed, dead people voting, etc.

### Suggestions for Changes in Voting Procedures

The Ohio Supreme Court is very strict about laches---if a person sits on their rights too long, they lose the right to file suit. The Ohio expedited procedures make election challenges run very smooth. Justice Stratton does not remember any suits brought on the day of the election. She supports a non-partisan head of state elections. Justice Stratton believes that last minute challenges should not be permitted and that lower courts need to follow the rules for the expedited procedures. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.



**Interview with John Tanner, Director, Civil Rights Division, U.S. Department of Justice**

February 24, 2006

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.

Authority and Process

The Voting Section, in contrast to the Public Integrity section as Craig Donsanto described it, typically looks only at systemic problems, 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 only apply to state action, so the section only sues 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, systematic changes forced upon those jurisdictions have made it so now the section 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 of individuals or systemic. 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.

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 an 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 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.

## **Interview with Lori Minnite, Barnard College**

February 22, 2006

### Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report "Securing the Vote." Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was---did election-day registration increase the possibility of fraud?

### Securing the Vote

In *Securing the Vote*, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud.

Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that 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. Often, voters are punished for fraud committed by voting officials.

### Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms. Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

### Recommendations

Assure there are accurate voter records and centralize voter databases

Reduce partisanship in electoral administration.

**Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund**

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

Santa Anna County, New Mexico-2004-intimidated voters by video taping them.

San Antonio-One African American voter subjected to a racial slur.

San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.

San Antonio-Closed polls while voters were still in line.

San Antonio-2003-only left open early voting polls in predominantly white districts.

San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

### Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the 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. This may be because the administration is so ideological and partisan.

Ms. Perales does not believe making election administration nonpartisan would have a big impact. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

## **Interview with Pat Rogers, private attorney**

March 3, 2006

### Background

In addition to his legal practice with *Modrall, Sperling, Roehl, Harris & Sisk*, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

### 2004 Litigation

In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3<sup>rd</sup> party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

### Major issues in NM w/ regard to vote fraud

Registration fraud seems to be the major issue, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are holes in the 3<sup>rd</sup> party registration requirement deadlines.

Rogers views a national law requiring ID as the best solution to registration problems. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

### Registration Fraud in 2004 election

It came to light that ACORN had registered a 13 year old. The father was an APD officer and received the confirmation, but it was sent to the next door address, a vacant house.

They traced this to an ACORN employee and it was established that this employee had been registering others under 18.

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he believed these workers were paid by the registration rather than hourly.

There have been no prosecution or convictions related to these incidents. In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political.

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

#### Other incidents

Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the *Rio Grande Sun*, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

#### Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

### In-person polling place fraud

There have only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy. Yet he contends that perspective misses the larger point of voter confidence. Although there has been a large public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

### Counting Procedures

The Secretary of State has also taken the position that canvassing of the vote should be done in private. In NM, they have a 'county canvas' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. They wouldn't be changing machine numbers, but paper numbers are vulnerable.

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. In the 2004 election, no standards were issued for counting provisional ballots. Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

### Recommendations

Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.

There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he



does agree there should be more national uniformity into how votes are counted and recorded.

## **Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico**

March 24, 2006

### Background

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

### Incidents of Fraud and Intimidation

During the 2004 election, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then the people outside were following the voters to their cars and videotaping them. This happened in areas that are mostly second and third generation Latinos. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico.

There have not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If

they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again. Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

#### Recommendations

Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.

The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.

There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

## **Interview with Tracy Campbell, author**

March 3, 2006

### Background

Campbell's first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the 'real politics' which he feels readers, not to mention academics, have little sense about. While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

While he hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

### Vote-buying and absentee fraud

Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50—or even more if an individual can bring their entire family. He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.

### Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

### Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes.

He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.

#### Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information. When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results right and showing the public a transparent process.

#### Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

#### Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

#### Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the polls, the better. Practices such as photographing people leaving a polling place may also tie into vote-buying, where photos are used to intimidate and validate purchased votes. A good way to combat such practices is by keeping electioneering as far from the polls as possible.

#### Recommendations

Specific voting administration recommendations Campbell advocates would include reducing the use of absentee ballots and improving the protective zone around polling places.

Campbell would also like to see enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low. He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.

He is skeptical of the feasibility of nonpartisan election administration, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He considers the judiciary the only legitimate check on election fraud.

## **Interview with Joe Sandler, Counsel to the DNC**

February 24, 2006

### Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15, 000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

### 2004-Administrative Incompetence v. Fraud

Sandler believes the 2004 election was a combination of administrative incompetence and fraud. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the country. This was accomplished by mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned. Sandler indicated that in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence. Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

## Fraud and Intimidation Trends

Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.

At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

## Sandler's Recommendations

Moving the voter lists to the state level is a good idea where carefully done

Provisional ballots rules should follow the law and not be over-used

No voter ID

Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules

Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should 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. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations 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.
6. 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.
7. State and local jurisdictions should 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.



8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. 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.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.
12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.

18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. States should make voter suppression a criminal offense at the state level, in all states.
21. States should improve the training of pollworkers.
22. States should expend significantly more resources in educating voters on where, when and how to vote.
23. Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.



**Interview with John Ravitz, Executive Director, New York City Board of Elections**  
February 16, 2006

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote.

If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been no complaints about voter intimidation since he has been at the Board. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters. The Board had to contact their Department supervisors to put a stop to it.

Charges regarding "ballot security teams" have generally just been political posturing.

The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.

With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share. Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This indicates that improved training is the most important measure we can take.

There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them. The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.

Absentee ballot fraud has also not been a problem in New York City. This is likely because absentee ballots are counted last – eight days after election day. This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider.

New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights. The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.

Recommendations

- Better poll worker training
- Thorough inspection of absentee ballots subsequent to the election

## **Interview with Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center**

### Brennan Center findings on fraud

The Brennan Center's primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission's ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is 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. She believes perhaps one half to one quarter of the time the person will be caught. Also, 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. For example, if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered.

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, parties have devoted extraordinary resources into 'smoking out' fraudulent voters. Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

### Countermeasures/statewide databases

Brennan has also considered what states are doing to combat impersonation fraud besides photo ID laws, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud. In another on the web site includes measures that can be taken that no states have adopted yet. Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

Weiser believes the best defense against fraud will be better voter lists—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of 'deadwood' on voter rolls and undermine the

common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting. This is analyzed in greater detail in the Brennan Center's critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates, although this is highly unlikely according to proper statistical methods. Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.

Regarding the Florida purge list, faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.

Ultimately, even 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. Now that HAVA has introduced a matching requirement, even greater skepticism is called for in judging the accuracy of list maintenance.

### Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have an extensive paper file of intimidating fliers and related stories from before the 2004 election. (They can supply copies after this week).

### Challengers

Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record from the 1982 NJ vs. RNC case for some of the history of these laws. Brennan is currently working on developing a model challenger law.

Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls. State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result. Furthermore, when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling. A voter does not want to have to go through a quasi-court proceeding in order to vote.

Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters. They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

### Recommendations

**Intimidation**— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.

**Fraud**— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.

**Voter lists**— 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.

**Challengers**—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.

Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.



**Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation**

February 22, 2006

Fraud in Indiana

Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of *voter impersonation* fraud or dead voter fraud been presented. In addition, there is no record of any credible complaint about *voter impersonation* fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before *approving* legislative attempts to address fraud.

The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states. Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against. He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be implemented as planned in 2008 considering the backlash against the law so far. He also feels ID laws are unconstitutional because of inconsistent application.

Statewide database as remedy

Groth believes many problems will be addressed by the statewide database required under HAVA. To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting. Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

### Intimidation and vote suppression

Groth is only aware of anecdotal evidence supporting intimidation and suppression activities. While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include police cars parked in front of African American polling places. However, most incidents of suppression which are discussed occurred well in the past. Trevor Davidson claims a fairly large scale intimidation program in Louisville.

### Challengers

There was widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. Previously, challengers at the polling place have been restricted to the 'chute,' which provides a buffer zone between voting and people engaging in political activity. That change will make it much easier to challenge voters. As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

### Photo ID and Challengers

Observers are especially concerned about how this change will work in conjunction with the photo ID provision. Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.

Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be. This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law is vague about acceptable cause for challenging a voter's ID. Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. The League of Women Voters is concerned about voters

with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge. Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

Furthermore, there is 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.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

#### Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

#### Recommendations

Supports nonpartisan administration of elections. Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.

He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state needs to expand the list so that most people will have at least one. If not, they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.

His personal preference would be signature comparison. Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves

open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

## **Interview with Neil Bradley, February 21, 2004**

### Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia Secretary of State Cox stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she would have heard about voter impersonation from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.

The type of voter fraud that involves impersonating someone else is very unlikely to occur. If someone wants to steal an election, it is much more effective to do so using absentee ballots. In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.

### Voter fraud and intimidation in Georgia

Georgia's process for preventing ineligible ex-felons from casting ballots has been improved since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.

In general, Mr. Bradley does not think voter fraud and intimidation is a huge problem in Georgia and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.

### Prosecution of Fraud and Intimidation

Mr. Bradley stated that fraud and intimidation are hard to prosecute. However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud. But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud.

Mr. Bradley believes that 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.

### Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. Increased and improved training of poll workers, including training on how to respectfully treat voters, is the most important reform that could be made.

Mr. Bradley also suggested that increased election monitoring would be helpful.

**Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania**

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.



## 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

## **Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights**

February 14, 2006

### Data Collection

Mr. Henderson had several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years. He suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we review the following documents and reports:

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

### Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years. They are sometimes racially based, sometimes based on partisan motives. He believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:

- Flyers with intentional misinformation, such as ones 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
- Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation
- Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.

Mr. Henderson believes that these matters are not pursued formally because often they involve activities that current law does not reach. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, once the election is over, civil litigation becomes moot. Finally, sometimes upon reflection after the campaign, some of the activities are not as sinister as believed at the time.

Mr. Henderson believes government does not engage in a sustained investigation of these matters or pursue any kind of resolution to them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

#### Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also supports Senator Barak Obama’s bill regarding deceptive practices, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt election-day registration, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- Expansion of early voting & no-excuse absentee voting, to boost turnout and reduce the strain on election-day resources.
- Provisional ballot reforms:
  - Should be counted statewide – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also function as voter registration applications, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: states should allow voters to use signature attestation to establish their identity

- The Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act
- Statewide registration databases should be linked to social service agency databases
- Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns within their states
- Create and enforce strong penalties for deceptive or misleading voting practices

## Prosecution Of Electoral Fraud Under United States Federal Law

By Craig Donsanto

In Prosecution of Electoral Fraud, Donsanto discusses what sort of conduct is currently considered to be actionable as vote fraud, the historical background for the role of the criminal prosecutor in this area, and the various federal laws and juridical precedents governing the prosecution of vote fraud. It is a very useful document for understanding the current Department of Justice's view of its mission in this area, its interpretation of the federal laws governing its work, and how the Department has and has not been able to utilize applicable provisions.

Donsanto stresses that because electoral administration is primarily a state rather than a federal matter, the federal government usually only has authority over electoral issues where: federal candidates are standing for election; a corrupt act occurs; a federal instrumentality is employed in the fraud; the fraud involves the participation of public officials "acting under color of law" in such a manner that the constitutional right to Due Process and/or Equal Protection is violated; and/or the fraud is motivated by an intent to deprive a class of voters who's rights have been specifically guaranteed by the United States Constitution.

Donsanto defines election fraud as "a substantive irregularity relating to the voting act--- such as bribery, intimidation, or forgery---which has the potential to taint the election itself." Specifically, this includes:

- \* Preventing voters from participating in elections where a federal candidate is on the ballot, or when done "under color of law" in any election—18 U.S.C. sections 241 & 242.
- \* Vote buying, 42 U.S.C. section 1973i(c).
- \* Voting more than once, 42 U.S.C. section 1973i(e).
- \* Fraudulent voting, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.
- \* Intimidating voters through physical duress in any election, 18 U.S.C. section 245(b)(1)(A), or through physical or economic threats in connection with their registering to vote or their voting in federal elections, 42 U.S.C. section 1973gg-10, or to vote for a federal candidate, 18 U.S.C. section 594.
- \* Malfeasance by election officials acting "under color of law" for actions such as ballot-box stuffing, falsely tabulating votes, or preventing valid voter registrations or votes from being given effect in any election, 18 U.S.C. sections 241 & 242, as well as in elections where federal candidates are on the ballot, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.

- \* Submitting fictitious names on voter registration roles, 42 U.S.C. sections 1973i(c) & 1973gg-10.
- \* Knowingly procuring eligibility to vote for federal office by persons who are not entitled to vote under applicable state law, 42 U.S.C. sections 1973i(c) & 1973gg-10 (criminal voting—prohibited in approximately 40 states) and 42 U.S.C. sections 1973i(c), 1972gg-10, 18 U.S.C. 1015(f) & 611 (non-citizen voting).
- \* Knowingly making a false claim of United States citizenship to register to vote in any election, 18 U.S.C. section 1015(f), or falsely claiming United States citizenship for registering or voting in any election, 18 U.S.C. section 911.
- \* Providing false information concerning a person's name, address or period of residence in a district in order to establish that person's eligibility to register or to vote in a federal election, 42 U.S.C. sections 1973i(c) & 1973gg-10.
- \* Causing the production of voter registrations that qualify alleged voters to vote for federal candidates, or the production of ballots in federal elections, that the actor knows are materially defective under applicable state law, 42 U.S.C. section 1973gg-10.
- \* Using the United States mails, or interstate wire facilities, to obtain the salary and emoluments of an elected official through any of the activities mentioned above, 18 U.S.C. sections 1341 & 1343.
- \* Ordering, keeping or having under one's authority or control any troops or armed men at any polling place in any election. The actor must be an active civilian or military officer or an employee of the United States government, 18 U.S.C. section 592.
- \* Intimidating or coercing a federal employee to induce or discourage "any political activity" by that employee, 18 U.S.C. section 610.

#### Other Points of Interest

- Most election fraud is aimed at corrupting elections for local offices, which control or influence patronage positions. Election fraud occurs most frequently where there are fairly equal political factions, and where the stakes involved in who controls public offices are weighty -- as is often the case where patronage jobs are a major source of employment, or where illicit activities are being protected from law enforcement scrutiny
- Vote buying offenses have represented a sizable segment of the federal election crime docket in modern times.
- Voter intimidation requires proof of a difficult element: the existence of physical or economic intimidation that is intended by the defendant and felt by the victim. The crime of voter "intimidation" normally requires evidence of threats, duress, economic coercion, or some other aggravating factor which tends to improperly induce conduct on the part of the victim. If such evidence is lacking, an



alternative prosecutive theory may apply to the facts, such as multiple voting in violation of 42 U.S.C. ' 1973i(e). 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 that 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.

- Section 1973gg-10(2) is a specific intent offense. This means that the offender must have been aware that citizenship is a requirement for voting and that the registrant did not possess United States citizenship. In most instances, proof of the first element is relatively easy because the citizenship requirement is stated on the voter registration form, and the form requires that the voter check a box indicating that he or she is a citizen. Proof of the second element, however, may be more problematic, since the technicalities of acquiring United States citizenship may not have existed in the culture of the registrant's country of birth, or otherwise been evident to him, and because the registrant may have received bad advice concerning the citizenship requirement. These issues can also usually be overcome by the fact that all voter registration forms now require a registrant to certify that he or she is a citizen. Section 611 is a relatively new statute that creates an additional crime for voting by persons who are not United States Citizens .It applies to voting by non-citizens in an election where a federal candidate is on the ballot, except when: (1) non-citizens are authorized to vote by state or local law on non-federal candidates or issues, and (2) the ballot is formatted in a way that the non-citizen has the opportunity to vote solely for the non-federal candidate or issues on which he is entitled to vote under state law. Unlike section 1015(f), section 611 is directed at the act of voting, rather than the act of lying. But unlike section 1015(f), Section 611 is a strict liability offense in the sense that the prosecution must only prove that the defendant was not a citizen when he registered or voted. Section 611 does not require proof that the offender be aware that citizenship is a prerequisite to voting.

**Interview with Douglas Webber, Assistant Attorney General, Indiana**

February 15, 2006

**Background**

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

**Litigation**

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

**Incidents of fraud and intimidation**

Mr. Webber thinks that no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting--totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solve the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one case absentee votes were exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

### Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

### Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- 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.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

## **Interview with Kevin Kennedy, State Elections Director, State of Wisconsin**

April 11, 2006

### Background

Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

### 2004 Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The 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.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the

transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a drivers license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

#### Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

#### Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

Recommendations

Better trained poll workers

Ensure good security procedures for the tabulation process and more transparency in the vote counting process

Conduct post-election audits

## **Interview with Sarah Bell Johnson Interview**

April 19, 2006

### Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

### Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target. Elderly residents request absentee ballots, and then workers show up and 'help' them vote their ballots. Though there have been some cases in the Eastern district of election day fraud, most have been absentee.

Johnson argues that it is hard to distinguish between intimidation and vote buying. They have also seen 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.

While she is aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.

### Challengers

Challengers are permitted at the polls in Kentucky. Each party is allowed two per location, and they must file proper paperwork. There is a set 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.

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that relatively few challengers end up being officially registered, and that the practice has grown less common in recent years. This is due more to a change of fashion than anything. And after all, those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.

In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.

### Prosecutions

Election fraud prosecutions in Kentucky have only involved vote buying. This may be because that it is easier to investigate, by virtue of a cash and paper trail which investigators can follow. It is difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges. However, she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.

### Vote-hauling Legislation

Vote hauling is a common form of vote buying by another name. Individuals are legally paid to drive others to the polls, and then divide that cash in order to purchase votes. Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

### Paying Voter Registration Workers Legislation

A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session. Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses. As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.

### Deceptive practices

Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.



### Effect of Kentucky's Database

Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting. While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

Some factors have made especially important to their success. When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.

She is also a big supporter of a full Social Security number standard, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.

### Recommendations

Johnson believes the backbone of effective elections administration must be standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.

This philosophy extends to the provisional ballot question. While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.

They have also modified forms and procedures based on feedback from prosecutors. Johnson believes a key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.

She also believes public education is important, and that the media could do more to provide information about what is legal and what is illegal. Kentucky tries to fulfill this role by information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud *and* intimidation.

Johnson is somewhat pessimistic about reducing absentee ballot fraud. Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated

individuals will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.

**Interview with Steve Ansolobhere and Chandler Davidson**

February 17, 2006

Methodology suggestions

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 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 collection. Mr. Ansolobhere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobhere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.

Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobhere also recommended looking at experiments conducted by the British Election Commission.

Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur: videotaping of voters' license plates; 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; spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobhere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however. For example, vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and there are stories about union leaders getting members to vote a certain way by absentee ballot. This

problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

Go back to “for cause” absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.

False information campaigns should be combated with greater voter education. Los Angeles County’s voter education program should be used as a model.

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 purpose of the task force was to determine whether evidence of criminal fraud existed in the irregularities and, if evidence of fraud was found, to pursue criminal prosecutions.

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. Those investigations continue;
- \* 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.

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;
- \* 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; and
- \* 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.

The investigation 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. There is no evidence gathered to date that votes were cast under these specific false names. Also found were more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.

An additional finding of the task force was that the number of votes cast far exceeds the total number of recorded voters. The day after the 2004 election, the City of Milwaukee reported the total number of votes as 277,344. In late November an additional 191 previously uncounted absentee ballots were added, for a total of 277,535 votes cast. Still later, an additional 30 ballots were added, bringing the total number of counted votes to 277,565. City records, however, have been unable to match this total to a similar number of names of voters who cast ballots – either at the polls (under a prior registration or same day registration) or cast absentee ballots. At present, the records show a total of 272,956 voter names – for a discrepancy of 4,609. This part of the investigation was hampered by widespread record keeping errors with respect to recording the number of voters.

In the 2004 election, 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. These were 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. Included in this 1,300 were 141 same-day registrants from addresses outside the City of Milwaukee, but who voted within the City of Milwaukee. In several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards.

Another record keeping procedure hampering the investigation appears to be 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.



HvonSpakovsky@fec.gov  
01/18/2007 12:53 PM

To ddavidson@eac.gov  
cc  
bcc  
Subject

Donetta,

Enjoyed lunch. Here are three attachments you might be able to use on voter ID.

Hans



Missouri Affidavit of marvin Overby.pdf Lott Study.pdf Voter ID - Turnout Survey - Fed Society.pdf

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

KATHLEEN WEINSCHENK,  
WILLIAM KOTTERMAYER, ROBERT  
PUND, AMANDA MULLANEY,  
RICHARD VON GLAHN, MAUDIE  
MAE HUGHES, and GIVE  
MISSOURIANS A RAISE, INC.,

Plaintiffs,

v.

STATE OF MISSOURI, and  
ROBIN CARNAHAN, SECRETARY  
OF STATE,

Defendants.

No. 06AC-CC00656

Division 2

JACKSON COUNTY, MISSOURI, et  
al.,

Plaintiffs,

v.

STATE OF MISSOURI,

Defendant.

CONSOLIDATED WITH

No. 06AC-CC00587

Division 2

**AFFIDAVIT OF L. MARVIN OVERBY,**  
**IN SUPPORT OF INTERVENORS, DALE L. MORRIS AND**  
**MISSOURI SENATOR DELBERT SCOTT**

COMES NOW L. Marvin Overby, and having been sworn on his oath, deposes and states  
as follows:

1. I am over 21 years of age and competent to make this Affidavit. If called  
as a witness in this action, I could testify to the matters contained in this affidavit from  
personal knowledge and would testify as set forth herein.



2. I am currently a full professor of political science at the University of Missouri in Columbia and I have attached a current and accurate summary of my academic and professional experience which is attached as Exhibit "A".

3. I have had occasion to review and am familiar with the provisions of the Missouri Voter Protection Act in its final enacted form, especially as such provisions concern the requirement that certain persons present the specified forms of identification before casting a ballot and also those provisions of the Missouri Voter Protection Act providing photo identification without cost.

4. I have collaborated with Jeffrey Milyo and conducted additional research into the effect of the photo identification requirements contained in the Missouri Voter Protection Act upon voter participation. I have further researched the effect that such photo identification requirements will have upon the ability of Missourians to participate in an election.


5. The conclusions that I have reached and a description of the analysis undertaken are summarized on the report attached to this affidavit as Exhibit "B".

6. My research into the Missouri Voter Protection Act and the voter identification requirements and related provisions contained therein supports three essential conclusions.

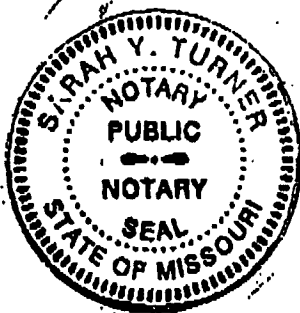
A. Our best estimate of the number of eligible Missouri voters that do not possess a Missouri Department of Revenue-issued photo ID and that are not residents of a facility licensed under chapter 198 is about 19,000 persons. Of these, about 6,000 are likely to desire a photo ID for the purpose of voting, based upon historic voter participation patterns.

- B. The existing scholarly literature strongly suggests that voter photo ID requirements are not likely to have a significant effect on either voter participation or the outcome of elections, nor is such a photo ID requirement likely to have a significant or differential impact on poor, less educated or minority voters.
- C. The existing scholarly literature does demonstrate that a significant percentage of citizens -- in Missouri and nationally --- lack confidence on the election process, a significant percentage of voters are concerned about vote fraud, and that significant majorities of voters from all political parties and racial groups support the requirement that a person provide a government-issued photo ID before casting a ballot.

FURTHER Affiant sayeth not.

  
\_\_\_\_\_  
L. Marvin Overby

Subscribed and sworn to before me this 30 day of August, 2006.



  
\_\_\_\_\_  
Notary Public

SARAH Y. TURNER  
Notary Public - State of Missouri  
County of Boone  
My Commission Expires Feb. 5, 2008

L. MARVIN OVERBY

*Curriculum Vitae*

Department of Political Science  
[REDACTED]  
[REDACTED]  
Columbia, MO 65211-6030  
[REDACTED]  
[REDACTED]

**ACADEMIC POSITIONS**

- Department of Political Science, University of Missouri  
Professor, 2004-present; Associate Professor, 2002-2004
- Department of Political Science, University of Mississippi  
Associate Professor, 1995-2002 (tenure awarded 1997); Assistant Professor, 1993-1995  
Adjunct Appointment, Center for the Study of Southern Culture, 1993-2002  
Senior Research Associate and Founding Co-Director, Social Science Research Laboratory,  
1994-2002
- Institute of English and American Studies, University of Szeged, Hungary  
Laszlo Orszagh Chair (Fulbright Distinguished Lecturer), 2000-2001
- Johns Hopkins University-Nanjing University Center for Chinese and American Studies  
Fei Yi-Ming Visiting Professor of Comparative Politics, 1997-1998 and 2005-2006.
- Department of Political Science, Loyola University Chicago  
Assistant Professor, 1991-1993; Instructor, 1990-1991

**EDUCATION**

- Ph.D., University of Oklahoma, Carl Albert Congressional Research and Studies Center, 1991  
Inter-University Consortium for Political and Social Research, University of Michigan, 1987  
A.B., Davidson College, *cum laude*, Honors in Political Science, 1983

**PROFESSIONAL PUBLICATIONS (Refereed Articles)**

- Orey, D'Andra, L. Marvin Overby, Barbara J. Walkosz, and Kimberly R. Walker. N.D. "Accounting for Racism: Responses to Political Predicaments in Two States." *State Politics and Policy Quarterly*, forthcoming.
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EXHIBIT

A

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- Ang, Adrian U-Jin and L. Marvin Overby. N.D. "Retirements, Retentions, and the Balance of Partisan Power in Contemporary Congressional Politics." Under first review at *Journal of Legislative Studies*.
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- Overby, L. Marvin and Harvey D. Palmer. N.D. "Investigating Heterogeneity in the Impact of Black Political Empowerment." Under first review at the *Journal of Politics*.
- Barth, Jay and L. Marvin Overby. N.D. "Narrowcasting: Radio Advertising in American Political Campaigns." Manuscript being prepared for probable submission to *Political Communication*.
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- Orey, D'Andra, L. Marvin Overby, and Pete Hatemi. N.D. "White Support for Recent Racial Referenda in the Deep South." Manuscript being prepared for probable submission to the *Journal of Politics*.
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- Auger, Vincent A. and L. Marvin Overby. 1998. "Teaching and Learning in Nanjing: Community, Communities, and Politics in an Overseas Program." Presented at the annual meeting of the American Political Science Association.
- Bruce, John M., Robert D. Brown, L. Marvin Overby, and Charles E. Smith, Jr. 1997. "Ticket-Splitting, Divided Government, and the 1996 Presidential Election." Presented at the annual meeting of the American Political Science Association.
- Overby, L. Marvin and Thomas A. Kazee. 1997. "Outlying Committees in the Statehouse: An Examination of the Prevalence of Committee Outliers in State Legislatures." Presented at the annual meeting of the American Political Science Association.
- Barth, Jay and L. Marvin Overby. 1997. "Contact, Context, and Citizen Attitudes Toward Gay Men and Lesbians: Results from a Recent National Survey." Presented at the 20<sup>th</sup> Annual Scientific Meeting of the International Society of Political Psychology, Krakow, Poland.
- Overby, L. Marvin, Charles E. Smith, Jr., John M. Bruce, Robert D. Brown, and John W. Winkle, III. 1997. "Justice in Black and White: Race, Perceptions of Justice, and Diffuse Support for the Judicial System in an American State." Presented at the annual meeting of the Midwest Political Science Association.
- Hetland, Gary, Christopher D. Martin, and L. Marvin Overby. 1996. "Retirements, Retention, and Realignment: Voluntary Congressional Departures and the Pace of Partisan Change in the Post-War South." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin and Sarah Ritchie. 1996. "Racial Redistricting and the Representation of Minority Interests: Evidence from Two State Legislatures." Presented to the annual meeting of the American Political Science Association.
- Overby, L. Marvin and Sarah Ritchie. 1995. "Symbolic vs. Substantive Representation?: Racial Redistricting in the Mississippi State Legislature." Presented to the annual meeting of the Southern Political Science Association.
- Brown, Robert D. and L. Marvin Overby. 1995. "Race, Redistricting, and Re-election: The Fate of White Incumbent Democrats in the 1994 Congressional Elections." Presented to the annual meeting of the American Political Science Association.
- Overby, L. Marvin. 1995. "Free Voting in a Provincial Parliament: The Case of 'Same-Sex' Legislation in Ontario, 1994." Presented to the annual meeting of the Canadian Political Science Association.
- Overby, L. Marvin and Leonardo Valdes. 1995. "Parties and Partisanship in Contemporary North America." Presented to the Conference on "Los Sistemas políticos de America del Norte, hoy: Desafios y convergencias," Universidad Nacional Autonoma de Mexico, Mexico City.
- Overby, L. Marvin and Robert D. Brown. 1995. "Electoral Coalitions and the Politics of Supreme Court Confirmation Votes: Re-election Constituencies and the Senate Vote on Justice Clarence Thomas." Presented to the annual meeting of the Midwest Political Science Association.
- Fisher, Samuel, III, L. Marvin Overby, and Richard Vengroff. 1994. "The 1994 Quebec Provincial Elections: Party Realignment, Independence Referendum, or More of the Same?" Presented to the meeting of the American Council for Quebec Studies.
- Overby, L. Marvin, Robert D. Brown, Jennifer M. Davis, Charles E. Smith, and David B. Holian. 1994. "The Prevalence and Dynamics of Outlier Committees in the U.S. Congress: 1951-1990." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin and Kenneth M. Cosgrove. 1994. "Unintended Consequences?: Racial Redistricting and the Representation of Minority Interests." Presented to the annual meeting of the American Political Science Association.
- Holian, David B., Robert D. Brown, L. Marvin Overby, and Charles E. Smith, Jr. 1994. "Committees as Preference Outliers: When is a Difference a Difference?." Presented to the annual meeting of the Midwest Political Science Association.

- Overby, L. Marvin and Kenneth M. Johnson. 1993. "Senior Citizens and Constituency Clout." Presented to the annual meeting of the American Political Science Association.
- Tatalovich, Raymond, L. Marvin Overby, and Donley T. Studlar. 1993. "Patterns of Abortion Voting in the Canadian House of Commons." Presented to the annual meeting of the Canadian Political Science Association.
- Overby, L. Marvin, Todd Lough, and Anne C. Layzell. 1993. "Follow the Bouncing Checks: Correlates and Consequences of the 1992 House Banking Scandal." Presented to the annual meeting of the Southwestern Political Science Association.
- Overby, L. Marvin. 1992. "Inexperienced Amateurs, Vulnerable Incumbents, and Political Change: Southern Republicans in the House of Representatives, 1946-1990." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin, Beth M. Henschen, Julie Strauss, and Michael H. Walsh. 1992. "African-American Constituents and Supreme Court Nominees: An Examination of the Confirmations of Thurgood Marshall and Clarence Thomas." Presented to the annual meeting of the American Political Science Association.
- Overby, L. Marvin and Timothy B. Krebs. 1992. "Excuses, Excuses: Congressional Adjournment Dates and Incumbent Return Rates, 1946-1990." Presented to the annual meeting of the Midwest Political Science Association.
- Frendreis, John P. and L. Marvin Overby. 1992. "Reversal of Fortune: The Rise and Fall of the Southern Republican Senate Class of 1980." Presented to the annual meeting of the Midwest Political Science Association.
- Overby, L. Marvin. 1991. "Political Amateurism, Legislative Inexperience, and Incumbency Behavior: Southern Republican Senators, 1980-1986." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin and Sarah Ritchie. 1990. "Mobilized Masses and Strategic Opponents: A Resource Mobilization Analysis of the Clean Air and Nuclear Freeze Movements and Their Opponents." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin. 1989. "Inputs and Outcomes of Western Peace Movements: An Application of Kitschelt's Political Opportunities Structures Thesis." Presented to the fourteenth annual European Studies Conference, University of Nebraska-Omaha.
- Overby, L. Marvin. 1989. "The Politics of Parochialism: Southern Senators and the Southern Democracy in the 1980s." Presented to the annual meeting of the American Political Science Association.
- Overby, L. Marvin and Sarah Ritchie. 1989. "Mobilized Masses and Strategic Opponents: A Reassessment of Policy-Making in the Wake of the Clean Air and Nuclear Freeze Movements." Presented to the annual meeting of the Midwest Political Science Association.
- Overby, L. Marvin. 1989. "Assessing Constituency Influence: A Loglinear Model of Congressional Voting on the Nuclear Freeze, 1982-1983." Presented to the annual meeting of the Southwestern Political Science Association.
- Overby, L. Marvin and Kenneth M. Cosgrove. 1988. "A Clash of Conceptions: Democratic Theories and the Ongoing Struggle for Northern Ireland." Presented to the annual meeting of the Western Political Science Association.
- Overby, L. Marvin. 1987. "'Our Peculiar Defects': Tocqueville on the Literature of Democracies." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin. 1987. "Implementing the New Federalism: Lessons from the Environmental Protection Agency's National Municipal Policy, 1984-1985." Presented to the fifth Student Pugwash USA International Conference, Stanford University.
- Overby, L. Marvin. 1987. "Politics and Integration: The Case of the Central American Common Market." Presented to the annual meeting of the Institute of Latin American Studies Student Association, University of Texas-Austin.
- Copeland, Gary W. and L. Marvin Overby. 1987. "Legislative Socialization and Inter-Branch Rivalry:



An Empirical Assessment of the Carter and Reagan Presidencies." Presented to the annual meeting of the Southwestern Political Science Association.

Overby, L. Marvin. 1986. "The Politicization of Principle: The Nuclear Freeze Movement in Congress, 1982-1983." Presented to the annual meeting of the Southern Political Science Association.

#### SELECTED PROFESSIONAL ACTIVITIES

Vice president and Program Chair, Southwestern Political Science Association, 2003-2004.

Executive Director, Southern Political Science Association, 1999-2001.

Editorial Board, *American Journal of Political Science*, 1998-2001.

Member, Site Selection Committee, Southwestern Social Science Association, 1999-2002.

Chair, Nominations Committee, Southwestern Political Science Association, 1997-1998. Committee member, 1996-1998.

Section Head, "Executives and Legislatures," 1996 Annual Meeting of the Southwestern Political Science Association.

Editor, *Extensions*, a forum for discussion of the Congress published semi-annually by the Carl Albert Center, 1986-1988.

#### COURSES TAUGHT

##### *Undergraduate:*

Introductory American Government  
Legislative Process

Comparative Legislatures

American Presidency

Politics of the American South

##### *Graduate:*

Scope and Method of Political Science

Seminar in American Legislative Politics

Seminar in Southern Politics

Seminar in American Political Institutions

#### PERSONAL GRANTS and LEAVES

Research Board, University of Missouri System, "The Institutionalization of Colonial and State Legislatures: 1781-1824 The Institutionalization of Colonial and State Legislatures: 1781-1824." 2005-2007. \$13,400. With Jay Dow.

Center for Arts and Humanities, University of Missouri. "Research Travel to Washington, DC, for Archival Work on the History of the Filibuster in the United States Senate." Fall 2004, \$500.

Faculty International Travel Award, "Travel to the Scientific Meeting of the International Society for Political Psychology, Lund, Sweden." Office of Research, University of Missouri, Summer 2004, \$1,500.

Global Scholars Summer Seminar in Russia, International Studies Center, University of Missouri, June 2004.

- Faculty Research Grant, "The Politics of Same-Sex Rights in Canada: An Examination and Analysis of Recent Provincial, Judicial, and Parliamentary Developments," Canadian Studies Program, Government of Canada, Summer 2004, \$7,000.
- Internationalizing the Curriculum Award, International Center, University of Missouri, Fall 2003, \$1,000.
- National Endowment for the Humanities Summer Seminar, "American Constitutionalism in Comparative Perspective," University of Notre Dame, Summer 2003, \$3,700.
- Sabbatical Leave, "The Etiology and Implications of Public Opinion Regarding Congressional Leaders," University of Mississippi, Fall 2001
- Canadian Studies Faculty Enrichment Grant, "Development of a Syllabus for a Course on Canadian Politics," Government of Canada, Summer 1999, \$4,500.
- Faculty Development Grant, "Travel to the Scientific Meeting of the International Society for Political Psychology, Krakow, Poland." College of Liberal Arts, University of Mississippi, Summer 1997, \$800.
- Faculty Research Small Grant, "The Roots of Cooperative Behavior in the U. S. Senate: Rational Choice or the Norm of Reciprocity?" Office of Research, University of Mississippi, Summer 1996, \$1,000.
- Faculty Development Grant, "Travel to the Annual Meeting of the Southwestern Political Science Association," College of Liberal Arts, University of Mississippi, Spring 1996, \$400.
- Faculty Development Grant, "Travel to the Annual Meeting of the Canadian Political Science Association, Montreal, Quebec." College of Liberal Arts, University of Mississippi, Summer 1995, \$425.
- Faculty Research Grant, "Free Voting in Canada: An Examination of the Federal and Selected Provincial Parliaments," Canadian Studies Program, Government of Canada, Summer 1994, \$5,000.
- Faculty Summer Support Grant, "Unintended Consequences: Race-Based Redistricting and the Representation of Minority Interests," Office of Research, University of Mississippi, Summer 1994, \$4,000.
- Partner's Grant, "Purchase of a Laptop PC for Off-Campus Research Activities," Chancellor's Office, University of Mississippi, Spring 1994, \$1,000.
- Paid Leave of Absence, "Inexperienced Amateurs, Vulnerable Incumbents, and Political Change: Southern Republicans in the House of Representatives, 1946-1990," Loyola University Chicago, Spring semester 1994 (declined).
- Summer Research Stipend, "Exploring the Roots of Legislative Committee Strength: An Empirical Test of the 'Ex Post Veto' Hypothesis," Loyola University Chicago, Summer 1993, \$4,000 (declined).
- Research Support Grant, "Inexperienced Amateurs, Vulnerable Incumbents, and Political Change: Southern Republicans in the House of Representatives, 1946-1990," Loyola University Chicago, Summer 1992, \$1,200.
- Research Support Grant, "Excuses, Excuses: Congressional Adjournment Dates and Incumbent Return Rates, 1946-1990," Loyola University Chicago, Summer 1991, \$1,000.
- Thomas J. Watson Fellowship, "The Role of the European Communities in Cross-Border Irish Relations," Thomas J. Watson Foundation, 1983-84, \$10,000.

**FUNDED ACTIVITIES and GRANTS (University of Mississippi Social Science Research Laboratory)**

- "Mississippi Alliance for Prevention — Evaluation Component," Governor's Office and Mississippi Department of Mental Health, 2001-2004, \$404,000. "Assessment of the Mississippi Pilot Tobacco Program: Teen-Oriented, Anti-Tobacco Media Campaign," Mississippi Department of Health, 1999-2000, \$300,000.
- "Assessment of the Crime and Security Needs of Elderly Mississippians," Mississippi Leadership

- Council on Aging, Spring-Summer 1999, \$31,000.
- "Retirement Community Feasibility Study," City of Aberdeen Chamber of Commerce, Summer - Fall 1997, \$75,000.
- "User Satisfaction Survey for Library Re-Accreditation," John Davis Williams Library, University of Mississippi, Spring 1997, \$750.
- "Survey of Political Science Departments," American Political Science Association, Spring 1997, \$7,500.
- "Coahoma Community College Needs Assessment," Coahoma Community College, Spring 1997, \$24,092.
- "Network Infrastructure Upgrade for the Social Science Research Laboratory," University of Mississippi Associates Grant, Spring 1997, \$7,215.
- "1996 Mississippi Elderly Needs Assessment Study," Mississippi Department of Human Services (coordinated with Dr. JoAnn O'Quin), Spring 1996, \$113,800.
- "Planning and Development District Elderly Needs Assessment," Mississippi Association of Planning and Development Districts, Spring 1996, \$57,400.
- "Public, Student, Teacher, and Staff Perceptions in the Oxford School District," Oxford School District, Spring 1996, \$12,500.
- "Needs Assessment/Marketing Survey for the University of Mississippi's Branch Campuses in Tupelo and Southaven," Chancellor's Office and the Office of Public Relations at the University of Mississippi, and the Ramey Agency, Fall 1995, \$42,300.
- "Public Perceptions of Bias in the Mississippi Courts," the Supreme Court of Mississippi's Committee on Bias in the Courts (in collaboration with Dr. John W. Winkle, III), Fall 1995.
- "Public Attitudes About the Mississippi Judiciary," the Mississippi Judicial Advisory Study Committee (in collaboration with Dr. John W. Winkle, III), Fall 1995, \$25,000.
- "Needs Assessment Survey," Division of Child and Family Services, Mississippi Department of Human Services, Spring 1995, \$16,500.
- "Public Attitudes Towards Sports Gambling," Mississippi Gaming Commission (coordinated with Mississippi State University's Social Science Research Center), Winter 1995, \$7,500.

#### RECENT INVITED PRESENTATIONS

- Nanjing University, "Black Elite Electoral Success and Public Feelings of Empowerment," December 2005.
- Johns Hopkins University-Nanjing University Center for Chinese and American Studies, "Supreme Court Appointments: Process and Politics," October 2005
- Gaines/Oldham Black Culture Center, University of Missouri, "The Rights of All: Blacks and the U. S. Constitution," October 2004.
- All-China Youth Federation Delegation, Asian Affairs Center, University of Missouri, "Public Opinion in the United States," May 2004
- University of Missouri Working Group on Canadian Studies, "Of Provinces, Parliaments, Parties, and Procedures: The Case of 'Same-Sex' Legislation in Ontario," December 2002.
- Harry F. Byrd Visiting Scholar, James Madison University, "The Rise and Stall of the Republican Party in the South," October 2002.
- Mary Baldwin College, "In a Free Country': Political Parties in the United States," October 2002.
- University of Missouri, "Committee Outliers in State Legislatures: A Counting Of and Accounting for Unrepresentative Committees in the Statehouse," January 2002.
- University of Arkansas, "Minority Empowerment in the South: An Examination of Public Attitudes Toward the Judiciary in Mississippi," January 2002.
- Peter Pazmany Catholic University (Budapest, Hungary), "You Can't Understand One Without the Other: Southern Politics and American Politics in the 20<sup>th</sup> Century," April 2001.
- Georgia State University, "Committee Outliers in State Legislatures: Data and Observations from a Forty-five State Sample," March 2001.

University of Debrecen (Debrecen, Hungary), "Representation of Minority Interests in the United States: Historical Development and Contemporary Issues," November 2000.  
Samford University, "Damned if You Do, Damned if You Don't: Contemporary Congressional Leadership and the Dilemma of Public Opinion," March 2000.  
Vanderbilt University, "Outliers in the Statehouse: An Examination of Committee Outliers in American State Legislatures," November 1999.

## **SELECTED UNIVERSITY SERVICE**

### **University of Missouri**

Campus Writing Board, 2004-2007  
Committee on Academic Appeals, College of Arts and Science, 2004-2005.  
Chair, Lectureship in American Traditions and Values Committee, College of Arts and Sciences, 2003-2004.  
Executive Committee, College of Arts and Sciences, 2003-2004, 2006-2009.  
Executive Committee, Department of Political Science, 2002-2004, 2004-2006.  
Chair, Recruitment Committees, Department of Political Science, 2002-2003, 2003-2004, 2004-2005, 2006-2007.  
Multicultural Studies Committee, Office of the Vice Provost for Undergraduate Studies, 2002-2003.

### **University of Mississippi**

Planning Committee, Symposium on the Scientific, Ethical, Legal, and Societal Implications of Stem Cell Research, 2001-2002  
Faculty Senate, 1998-2000, 2002.  
Chair, Faculty Governance Committee, 2002.  
Chair, General Academic Affairs Committee, 1999-2000.  
Member, Senate Executive Committee, 1999-2000, 2002.  
Housing Judicial Council, 1999-2000.  
Committee on Academic Freedom and Faculty Responsibility, 1999-2000.  
Academic Discipline Committee, 1998-2000, 2001-2002.  
Director of Graduate Studies, Department of Political Science, 1994-1997.

### **Loyola University Chicago**

Graduate Fellowships Committee, Graduate School, 1992-1993.  
Graduate Committee, Department of Political Science, 1992-1993.  
Faculty Coordinator, Loyola-Catholic University Washington Semester Exchange Program, College of Arts and Science, 1991-1992.

## **TEACHING AWARDS**

Cora Lee Graham Award for Outstanding Teaching of Freshman Students, College of Liberal Arts, University of Mississippi, 1999

## **GRADUATE HONORS**

Carl Albert Fellowship, University of Oklahoma, 1985-1990.  
Congressional Fellowship, American Political Science Association, 1988-1989 (Legislative Assistant to Rep. David E. Price, D-N.C.).  
Harriet Harvey Memorial Scholarship, University of Oklahoma, 1988-1989.  
John H. Leek Memorial Scholarship, Department of Political Science, University of Oklahoma, 1987 and 1988.

**Report on Kathleen Weinschenk et al. v. State of Missouri et al. and Jackson County, Missouri v. State of Missouri (Consolidated)**

Jeffrey Milyo  
University of Missouri

and

Marvin Overby  
University of Missouri

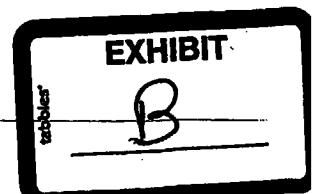
August 30, 2006

We have been asked by legal counsel in this case to i) evaluate the report by the Missouri Department of Revenue (DOR fiscal note 4947-01) on the number of eligible voters in Missouri who may not have a photo ID, ii) to discuss what the relevant scholarly literature implies about the effects of a photo ID requirement, and iii) to review the statistical analysis prepared by Dr. John Lott on the potential impact of the state of Missouri's new photo ID requirements on voter turnout.

A summary of the basic findings is as follows:

- 1) The DOR fiscal note likely overstates the number of eligible voters in Missouri without a photo ID. Our best estimate of the number of eligible voters who do not possess a DOR-issued photo ID and are not residents under chapter 198 is about 19,000 persons; of these, about 6,000 are likely to desire a photo ID for the purpose of voting, based upon voter turnout patterns. Adding in persons who are residents under chapter 198 and may be eligible to apply for a no cost nondriver license brings this number up to about 8,000 persons.
- 2) The existing scholarly literature does not examine photo ID laws, but existing findings strongly suggest that voter photo identification requirements are not likely to have a significant effect on either voter turnout or the outcome of elections, nor is such a requirement likely to have a significant or differential impact on poor, less educated, or minority voters. Moreover, a review of survey data shows strong public support for photo IDs, indicating the probability that such requirements would enhance public confidence in the voting process and, perhaps, even increase voter turnout.
- 3) Dr. Lott's analysis employs appropriate data and statistical methods; his findings accord with the relevant scholarly literature on voter turnout. Lott's analysis is the best existing estimate of the likely impact of the new photo ID law on eligible voters in Missouri.

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In the next section, we report on our qualifications. We then review the DOR fiscal note, the scholarly literature and the report by Dr. Lott, in turn.

## 1. Qualifications

Dr. Jeffrey Milyo is an associate professor in both the Truman School of Public Affairs and the Department of Economics at the University of Missouri in Columbia, Missouri. Dr. Milyo has been on the faculty of the Harris School of Public Policy at the University of Chicago, and has been a visiting scholar at the Massachusetts Institute of Technology, Yale University, and most recently, Stanford University. Milyo identifies himself as a Republican; his *curriculum vitae* is included in Appendix A.

Dr. Milyo's research specialty is in the area of statistical analyses of American political economy; his work has been published in a number of leading peer-reviewed journals, including, the *American Economic Review*, the *Quarterly Journal of Economics*, the *Journal of Law and Economics*, the *Journal of Public Policy Analysis and Management*, the *State Politics and Policy Quarterly* and the *Election Law Journal*. He frequently serves as a peer-reviewer for the leading journals in economics and political science, including the *American Political Science Review*, the *American Journal of Political Science*, the *Quarterly Journal of Political Science* and the *Journal of Politics*.

Dr. Marvin Overby is a professor in the Department of Political Science at the University of Missouri in Columbia, Missouri. He has also served on the faculties of Loyola University-Chicago and the University of Mississippi, and has held visiting appointments at the University of Szeged (Hungary) and the Johns Hopkins University-Nanjing University Center for Chinese and American Studies (China). Overby identifies himself as a Democrat and has worked for a Democratic member of the U. S. of Representatives; his *curriculum vitae* is included in Appendix A.

Dr. Overby's research focuses on statistical analyses of American politics, including issues of minority representation. His research has been published in a number of leading peer-reviewed journals, including the *American Political Science Review*, *American Journal of Political Science*, *The Journal of Politics*, *Legislative Studies Quarterly*, *Political Research Quarterly*, *American Politics Research*, *Polity*, *State Politics and Policy Quarterly*, and the *Journal of Legislative Studies*. He regularly reviews manuscripts for these journals, and his work and opinions have been cited in such media outlets as *The Wall Street Journal*, the *Washington Post*, *The Boston Globe*, the *National Journal*, the *Economist*, and *Congressional Quarterly Weekly Report*.

## 2. DOR Fiscal Note 4947-01

The Missouri Department of Revenue prepared a fiscal note estimating the anticipated cost of SB 1014 and undertook to estimate the number of eligible voters in Missouri who may be without photo ID as of June 14, 2006. (A copy of the fiscal note is attached as Appendix B.) The DOR fiscal note is an estimate of the cost of SB 1014 under a version of the legislation that was prior to the amendment providing an exemption from the photo

identification requirement for voters born before 1941. This analysis of the legislation prior to the incorporation of the exemption means that the version of the DOR's estimate of costs and voters likely affected by the ID requirements will be greater than those actually affected by the law as enacted.

The DOR started with the U.S. Census estimate of voting age population (VAP) in Missouri in 2000, then subtracted the number of persons who were at least 23 years of age as of 2006 and had a DOR-issued photo ID. This latter figure is 3,998,304 persons; it is meant to be an estimate of the number of persons age 18 and older in 2000 with photo ID's; however, this method ignores out-migration of younger persons and in-migration of older persons. It is unknown how these different sources of undercount and overcount net out. Further this estimate requires a projection of the photo-ID holding populations 5 years removed from the Census count. In general, the more distant the projected year from the base year, the less reliable will be any such projection.

As an alternative method of calculating the number of eligible voters not holding a DOR-issued photo ID, we prefer to make only a one-year out projection of VAP in 2006, and to utilize DOR's actual count of persons holding DOR photo ID on August 10, 2006.

On August 4, 2006 the U.S. census released its most current estimate of VAP in Missouri as of July 1, 2005; that figure is 4,422,078 persons.<sup>1</sup> However, this figure needs to be adjusted to match the August 10, 2006 date of the DOR count of persons with photo ID. We accomplish this by applying the annual growth rate from July 2004 to July 2005, which is approximately 0.0178, to yield an estimate of state VAP as of July 2006. We then pro-rate the annual growth rate to update this estimate to August 10, 2006; the resulting estimate of Missouri VAP is 4,509,790 persons. Subtracting the 4,458,726 persons known to hold DOR-issued photo ID as of August 10, 2006, yields an estimate of 51,064 voting age persons without DOR-issued photo-ID.

The DOR estimates that 31,152 VAP persons without photo-ID are also "residents under chapter 198 who are not likely to be physically able to ambulate to a polling place." Of these persons, the DOR estimates that 2,077 will apply for a no cost non-driver license. We have no basis to dispute this estimate, so we adopt this DOR figure without amendment.

Given the above, the number of VAP who are *not* residents under chapter 198 *and* do not possess DOR-issued photo ID's is (51,064 less 31,152), or 19,912 persons.

However, voting age population (VAP) overstates the voting eligible population (VEP) because it includes non-citizens, currently disenfranchised felons, persons who do not meet state residency requirements, and persons deemed mentally incompetent. For this reason, political scientists employ estimates of voting eligible state populations that exclude such ineligible voters; the best estimates of VEP that we know of are from the US Election Project and have been developed by Dr. Michael McDonald at George

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<sup>1</sup> <http://www.census.gov/popest/datasets.html>.

Mason University in Fairfax, VA.<sup>2</sup> The estimated VEP from this source corrects for non-citizens and disenfranchised felons only.

Based on the most current US Election Project data for 2006, the average ratio of VEP to VAP is approximately 0.97 (it is lower in earlier years); so we multiply 19,912 persons by this ratio, to yield an estimate of 19,315 voting eligible persons without photo-ID and not residents under chapter 198. Even so, this figure certainly overstates the number of such persons who would choose to vote, even absent the photo ID requirement.

For this reason, the DOR fiscal note adjusts its estimate downward by assuming that the state-wide average voter turnout rate of 50% (based on VAP) is a proxy for the proportion of persons who would desire a photo ID under the new requirements for the purposes of voting. Applying this adjustment to the VAP of persons without DOR-issued photo ID and not residents under chapter 198, leaves just 9,956 such persons whom we estimate would desire a photo ID in order to vote.

However, the population of individuals that does not possess a DOR-issued photo ID is typically assumed to be poor, less educated, and disproportionately composed of racial and ethnic minorities. It is well known in political science research that after correcting for income and education, race has little impact on voter turnout. For this reason, we focus on the lowest quintile of family income or persons without a high school education. Both of these groups exhibit turnout rates in the range of 30%-40% of VAP.<sup>3</sup> Taking the midpoint of this range (*i.e.*, 35%) and multiplying it by the VAP not possessing DOR-issued photo ID and not resident under chapter 198 leaves just 6,969 persons.

Even this final estimate of just under 7,000 persons is likely to be an overestimate. We have not taken into consideration that some small number of these persons will not meet residency requirements or that some small number may be mentally incompetent. Further, we have not considered that those persons without photo ID may be disproportionately likely to be non-citizens or disenfranchised felons, or may have even lower turnout rates than the lowest quintile of family income earners. In addition, some fraction of these persons will already possess a military ID, passport, or some other government-issued photo ID (which are not accounted for in the DOR figures) and would not require any additional identification in order to vote.

Further, approximately 13.5% of Missourians are over age 65;<sup>4</sup> in 2006, persons age 65 and older may cast a provisional ballot without a photo ID. Therefore, as many as 941 persons (13.5% of 6,969) may feel no urgent need to obtain a new photo ID; this leaves about 6,028 persons who may be expected to desire a photo ID.

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<sup>2</sup> <http://elections.gmu.edu/>

<sup>3</sup> Authors' calculation from Highton, Benjamin (2005). "Self-reported versus proxy-reported turnout in the Current Population Survey," *Public Opinion Quarterly*, 69(1): 113-123; also, Wilson, James Q. and John J. Dilulio (2004). *American Government*. Houghton-Mifflin (Boston: MA).

<sup>4</sup> Census 2000 Summary File 1 (SF 1) 100-Percent Data



Given this analysis, and adding back the DOR estimate of 2,077 persons who are residents under chapter 198 and may apply for a photo ID, we conclude that an upper-bound estimate for the number of persons who are eligible and may choose to obtain a new photo ID is 8,105 persons.

Recent news reports suggest that 1,400 persons have already received photo ID's from the DOR.<sup>5</sup> Given that this rate may increase as the election draws closer, the running count to date is reasonably in line with our estimate --- and stands in stark contrast to claims that hundreds of thousands of voters will need to obtain a photo ID. Such claims appear to be without a sound foundation.

## 2. Review of the Scholarly Literature

There are no systematic statistical studies of the effects of photo ID requirements for voting. This is despite the fact that most other countries both require such identification and experience higher rates of turnout than seen in the U.S. Comparative studies of voter turnout across countries focus on voter registration, the frequency of elections, non-compulsory voting, and single-member districts (as opposed to proportional representation) as reasons that turnout in the U.S. is low relative to other developed democracies.<sup>6</sup> The fact that such cross country studies do not even entertain the possibility that photo ID requirements reduce turnout is itself informative about the opinion of the profession regarding the likely unimportance of such laws for turnout.

There are many studies that analyze the effects of other voting institutions on turnout. In general this literature finds modest effects of post-registration laws (*e.g.*, time off work for voting, polls open early or late, mailing sample ballots, etc.).<sup>7</sup> This is because voter registration is a relatively higher hurdle for most persons; adding or removing some marginal costs of voting beyond registration has virtually no observable effect on turnout.

Several studies find some negative effect of voter registration laws; however, a well-known study published in the lead journal of the American Political Science Association casts serious doubt on such claims, even arguing that: "what was thought to be a fact, namely that poorly educated persons are more deterred from voting by registration laws than well-educated persons, is not a fact."<sup>8</sup> Further, recent work shows "even the most dramatic easing of voter registration costs" has only modest effects on number of voters and improvement in turnout among lower socioeconomic status groups.<sup>9</sup>

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<sup>5</sup> The *Dexter Daily Statesman*, viewed on August 30, 2006  
<http://www.dailystatesman.com/story/1165550.html>.

<sup>6</sup> Powell, G. Bingham, Jr. (1986). "American Voter Turnout in Comparative Perspective." *American Political Science Review* 80: 17-44; and Blais, Andre (2006). "What Affects Voter Turnout?" *Annual Review of Political Science*, 9: 111-125.

<sup>7</sup> Primo, David, Matthew L. Jacobsmeier and Jeffrey Milyo (forthcoming). "Estimating the Effects of State Policies and Institutions with Mixed Level Data," *State Politics and Policy Quarterly*.

<sup>8</sup> Nagler, Jonathan (1991). "The Effect of Registration Laws and Education on U.S. Voter Turnout," *American Political Science Review*, 85(4): 1393-1405.

<sup>9</sup> Brians, Craig L. and Bernard Grofman (2001). "Election Day's Registration Effects on U. S. Voter Turnout," *Social Science Quarterly*, 82:170-183.

In addition, empirical studies generally show only very modest influence of voter turnout on election results. Even under the most extreme assumptions (*e.g.* if *everyone* voted), increased turnout would rarely affect the outcome of an election.<sup>10</sup>

In fact, scholars of American politics generally agree that voter turnout is determined largely by idiosyncratic factors, such as an individual's intrinsic value of voting (*i.e.*, does the individual feel a duty to vote).<sup>11</sup> For this reason, factors that influence trust and confidence in the integrity of the electoral process are generally thought to be important determinants of an individual's decision to vote.<sup>12</sup> Influential evidence on the importance of the intrinsic value of voting comes from field experiments in which individuals receive reminders about their civic duty to vote; the treatment effect of mailings and personal canvassing significantly increases voter turnout.<sup>13</sup> Finally, while there is some debate, the best evidence suggests that negative advertising reduces voter turnout, primarily because of its detrimental effect on public trust in the political process.<sup>14</sup>

The evidence that public trust in the integrity of the electoral process strongly suggests that concerns about voter fraud may reduce voter turnout. There is broad agreement that there have been problems with voter fraud in Missouri, particularly St. Louis City. The extent of the problem has been the focus of testimony in both Washington and Jefferson City, and has been discussed in the academic literature.<sup>15</sup> Furthermore, courts in Missouri have recognized the nature of this problem. In its decision in *Missouri, ex. rel. Bush-Cheney 2000 Inc. v Baker* the Missouri Court of Appeals held that “[c]ourts should not hesitate to vigorously enforce the election laws so that every properly registered voter has the opportunity to vote. But equal vigilance is required to ensure that only those entitled to vote are allowed to cast a ballot. Otherwise, the rights of those lawfully entitled to vote are inevitably diluted” (34 S.W. 3d 410, 413 [2000]).

Public opinion polls – both nationally and in Missouri – have consistently shown that a) a significant percentage of Americans lack confidence in the election process; and b) there

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<sup>10</sup>Citrin, Jack, Eric Schickler, and John Sides (2003). “What if Everyone Voted?” *American Journal of Political Science* 47:75-90; Highton, Benjamin and Raymond Wolfinger (2001). “The Political Implications of Higher Turnout,” *British Journal of Political Science*, 31179-192.

<sup>11</sup>Matsusaka, John and Filip Palda (1999). “Voter Turnout: How Much Can We Explain?” *Public Choice* 98: 431-446.

<sup>12</sup>Putnam, Robert (2000). *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon and Schuster; Primo, David and Jeffrey Milyo (2006). “Campaign Finance Law and Political Efficacy: Evidence from the States,” *Election Law Journal*, 5(1): 23-39.

<sup>13</sup>Gerber, Alan and Donald Green (2000). “The Effects of Canvassing, Telephone Calls and Direct Mail on Voter Turnout: A Field Experiment,” *American Political Science Review*, 94(3): 653-663; Gerber, Alan and Donald Green (2000). “The Effect of a Non-Partisan Get-Out-the-Vote Drive: An Experimental Study of Leafletting,” *Journal of Politics*, 62(3): 846-857.

<sup>14</sup>Ansolabehere, Stephen D., Shanto Iyengar, and Adam Simon (1999). “Replicating Experiments Using Aggregate and Survey Data: The Case of Negative Advertising and Turnout” *American Political Science Review*, 93: 901-909.

<sup>15</sup>See Kropf, Martha. N.D. “Dogs and Dead People: Incremental Election Reform in Missouri,” manuscript, University of Missouri-Kansas City; see also Ruda, Gabriella B. (2003-2004). “Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act.” *Fordham Urban Law Journal* 31:235-259.

is widespread public support, across demographic and partisan divides, for the use of photo identification at polling places.<sup>16</sup> Such findings have been reconfirmed recently by a survey by Rasmussen Poll, a copy of which is attached as Appendix C.

Relevant excerpts from the Rasmussen poll follow:

“A plurality of voters in each of 32 states agree that the political system in the U.S. is ‘badly broken.’ Percentages range from a high of 63% in Vermont to 47% in Nebraska, but all point in the same direction.”

“An earlier, national, survey found that just 48% of American adults believe that elections are generally fair to voters. That number has been fairly consistent since we began polling on the topic in the mid-90s.”

“There was little geographic difference on the question of whether individuals should be required to present photo identification (such as a driver’s license) when they go to the polls. Support for this approach ranged from 60% in Vermont to 92% in Florida....Maine was the only other state to register below the 73% level of support for requiring photo ID’s.”

“Discussions of voter fraud sometime revolve around assumptions of voter suppression—people who should be allowed to vote but are prevented from doing so. Other times, people express concern that people vote who are not eligible. In eighteen states, more voters are concerned to ineligible voters are allowed to cast ballots. In twelve states, more voters are concerned about people prevented from voting.”

“Voters in New York are more likely than in any other state to express a concern about voter suppression. Thirty-four percent (34%) of Empire State voters hold this view.”

“Washington and Arizona are tops when it comes to concerns about ineligible people casting ballots. In Washington, that may be the result of controversies in the election for Governor. In Arizona, it is more likely tied to concerns about illegal immigrants.”

Source: Rasmussen Poll (August 28, 2006); see Appendix C

Finally, a universal photo ID requirement would also obviate selective challenges that might be racially motivated, thereby increasing the equity of the voting experience.

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<sup>16</sup> A *Wall Street Journal*/NBC News poll conducted in April 2006 shows 62% of respondents nationwide were “strongly in favor” and 19% “somewhat in favor” of laws requiring “a valid photo identification” to vote. In sharp contrast, a mere 7% of respondents were “mildly” or “strongly opposed.” See [online.wsj.com/public/resources/documents/poll20060426.pdf](http://online.wsj.com/public/resources/documents/poll20060426.pdf) [accessed August 30, 2006].

Among other localities, such challenges have been documented in recent years in Arkansas.<sup>17</sup> Some prominent African-American leaders (such as Andrew Young) have also supported mandatory photo IDs for voting because “‘requiring ID can help poor people’ who otherwise might be even more marginalized by not having one.”<sup>18</sup>

### 3. Report by Dr. John Lott

We have reviewed the report by Dr. Lott from August xx, 2006); we evaluated this work as we would do in the capacity of peer reviewers for a leading journal such as the *Journal of Politics* or the *Journal of Law and Economics*. Overall, we find the quality of the data and statistical analysis to be of the sort appropriate for a top academic journal. In addition, we note that the findings in Dr. Lott’s analysis are consistent with our understanding of the implications of the existing scholarly literature on state institutions, public trust and voter turnout.

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<sup>17</sup> See Ruda (2003-2004), p. 251.

<sup>18</sup> Cited in the on-line version of the *Wall Street Journal*; url: <http://www.opinionjournal.com/diary/?id=110008411> (accessed August 30, 2006).

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**ACADEMIC POSITIONS**

- Department of Political Science, University of Missouri  
Professor, 2004-present; Associate Professor, 2002-2004
- Department of Political Science, University of Mississippi  
Associate Professor, 1995-2002 (tenure awarded 1997); Assistant Professor, 1993-1995  
Adjunct Appointment, Center for the Study of Southern Culture, 1993-2002  
Senior Research Associate and Founding Co-Director, Social Science Research Laboratory,  
1994-2002
- Institute of English and American Studies, University of Szeged, Hungary  
Laszlo Orszagh Chair (Fulbright Distinguished Lecturer), 2000-2001
- Johns Hopkins University-Nanjing University Center for Chinese and American Studies  
Fei Yi-Ming Visiting Professor of Comparative Politics, 1997-1998 and 2005-2006.
- Department of Political Science, Loyola University Chicago  
Assistant Professor, 1991-1993; Instructor, 1990-1991

**EDUCATION**

- Ph.D., University of Oklahoma, Carl Albert Congressional Research and Studies Center, 1991  
Inter-University Consortium for Political and Social Research, University of Michigan, 1987  
A.B., Davidson College, *cum laude*, Honors in Political Science, 1983

**PROFESSIONAL PUBLICATIONS (Refereed Articles)**

- Orey, D'Andra, L. Marvin Overby, Barbara J. Walkosz, and Kimberly R. Walker. N.D. "Accounting for Racism: Responses to Political Predicaments in Two States." *State Politics and Policy Quarterly*, forthcoming.
- Overby, L. Marvin and Jay Barth. 2006. "Radio Advertising in American Political Campaigns: The Persistence, Importance, and Effects of Narrowcasting." *American Politics Research*, 34: 451-478.
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- the Nuclear Freeze, 1982-1983." *Legislative Studies Quarterly* 16:297-312.
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- Overby, L. Marvin. 1988. "Alexis de Tocqueville on the Political Dimensions of Democratic Literature." *The Mid-American Journal of Politics* 3(1):54-71.

#### PROFESSIONAL PUBLICATIONS (Books, Chapters, Other)

- Overby, L. Marvin. 1995. "Garret FitzGerald." In *Political Leaders of Contemporary Western Europe*, ed. David Wilsford. New York: Greenwood Press.
- Layzell, Anne C. and L. Marvin Overby. 1994. "Biding Their Time in the Illinois 9th." *Who Runs for Congress?: Ambition, Context, and Candidate Emergence*, ed. Thomas A. Kazee. Washington: CQ Press.
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- Ang, Adrian U-Jin and L. Marvin Overby. N.D. "Retirements, Retentions, and the Balance of Partisan Power in Contemporary Congressional Politics." Under first review at *Journal of Legislative Studies*.
- Overby, L. Marvin. N.D. "Some Things Ya'll Need to Know: Teaching Southern Politics at Home and Abroad." Under first review at *Journal of Political Science Education*.
- Overby, L. Marvin and Harvey D. Palmer. N.D. "Investigating Heterogeneity in the Impact of Black Political Empowerment." Under first review at the *Journal of Politics*.
- Barth, Jay and L. Marvin Overby. N.D. "Narrowcasting: Radio Advertising in American Political Campaigns." Manuscript being prepared for probable submission to *Political Communication*.
- Overby, L. Marvin and Jay Barth. N.D. "The Medium and the Media Matter: Assessing Campaign Ads with Panel Data." Manuscript being prepared for probable submission to *Political Communication*.
- Orey, D'Andra, L. Marvin Overby, and Pete Hatemi. N.D. "White Support for Recent Racial Referenda in the Deep South." Manuscript being prepared for probable submission to the *Journal of Politics*.
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- Auger, Vincent A. and L. Marvin Overby. 2005. "Teaching and Learning in Nanjing: Community, Communities, and Politics in an Overseas Program." 1:233-247.
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#### CONFERENCE PRESENTATIONS

- Ang, Adrian and L. Marvin Overby. 2006. "Retirements, Retentions, and the Balance of Power in

- Contemporary Congressional Politics." Paper accepted for presentation at the annual meeting of the American Political Science Association.
- Drury, A. Cooper, L. Marvin Overby, Adrian Ang, and Yitan Li. 2006. "Pretty Prudent or Swayed by Rhetoric: The American Public's Support for Military Action." Paper presented at the annual meeting of the International Studies Association.
- Keiser, Lael, L. Marvin Overby, Kenneth J. Meier, and Daniel Hawes. 2005. "Gender, Race, and the Theory of Representative Bureaucracy." Presented at the annual meeting of the Midwest Political Science Association.
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- Overby, L. Marvin, Thomas A. Kazee, and David W. Prince. 2001. "Committee Composition in State Legislatures: An Examination of the Causes of Committee Outliers." Presented at the annual meeting of the American Political Science Association.
- Overby, L. Marvin, Thomas A. Kazee, and David W. Prince. 2000. "Committee Outliers in State Legislatures." Presented at the annual meeting of the Midwest Political Science Association.
- Winkle, John W., III, L. Marvin Overby, Robert D. Brown, John M. Bruce, and Charles E. Smith, Jr. 2000. "Race, Representation, and Racial Empowerment: An Examination of the Mississippi Judicial System." Presented at the Citadel Symposium on Southern Politics.
- Overby, L. Marvin. 1999. "The Etiology and Implications of Public Support for Congressional Leaders." Presented at the annual meeting of the Southern Political Science Association.
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- Bruce, John M., Robert D. Brown, L. Marvin Overby, and Charles E. Smith, Jr. 1997. "Ticket-Splitting, Divided Government, and the 1996 Presidential Election." Presented at the annual meeting of the American Political Science Association.
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- Hetland, Gary, Christopher D. Martin, and L. Marvin Overby. 1996. "Retirements, Retention, and Realignment: Voluntary Congressional Departures and the Pace of Partisan Change in the Post-War South." Presented to the annual meeting of the Southern Political Science Association.
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- Overby, L. Marvin and Leonardo Valdes. 1995. "Parties and Partisanship in Contemporary North America." Presented to the Conference on "Los Sistemas politicos de America del Norte, hoy: Desafios y convergencias," Universidad Nacional Autonoma de Mexico, Mexico City.
- Overby, L. Marvin and Robert D. Brown. 1995. "Electoral Coalitions and the Politics of Supreme Court Confirmation Votes: Re-election Constituencies and the Senate Vote on Justice Clarence Thomas." Presented to the annual meeting of the Midwest Political Science Association.
- Fisher, Samuel, III, L. Marvin Overby, and Richard Vengroff. 1994. "The 1994 Quebec Provincial Elections: Party Realignment, Independence Referendum, or More of the Same?" Presented to the meeting of the American Council for Quebec Studies.
- Overby, L. Marvin, Robert D. Brown, Jennifer M. Davis, Charles E. Smith, and David B. Holian. 1994. "The Prevalence and Dynamics of Outlier Committees in the U.S. Congress: 1951-1990." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin and Kenneth M. Cosgrove. 1994. "Unintended Consequences?: Racial Redistricting and the Representation of Minority Interests." Presented to the annual meeting of the American Political Science Association.
- Holian, David B., Robert D. Brown, L. Marvin Overby, and Charles E. Smith, Jr. 1994. "Committees as Preference Outliers: When is a Difference a Difference?." Presented to the annual meeting of the Midwest Political Science Association.

- Overby, L. Marvin and Kenneth M. Johnson. 1993. "Senior Citizens and Constituency Clout." Presented to the annual meeting of the American Political Science Association.
- Tatalovich, Raymond, L. Marvin Overby, and Donley T. Studlar. 1993. "Patterns of Abortion Voting in the Canadian House of Commons." Presented to the annual meeting of the Canadian Political Science Association.
- Overby, L. Marvin, Todd Lough, and Anne C. Layzell. 1993. "Follow the Bouncing Checks: Correlates and Consequences of the 1992 House Banking Scandal." Presented to the annual meeting of the Southwestern Political Science Association.
- Overby, L. Marvin. 1992. "Inexperienced Amateurs, Vulnerable Incumbents, and Political Change: Southern Republicans in the House of Representatives, 1946-1990." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin, Beth M. Henschen, Julie Strauss, and Michael H. Walsh. 1992. "African-American Constituents and Supreme Court Nominees: An Examination of the Confirmations of Thurgood Marshall and Clarence Thomas." Presented to the annual meeting of the American Political Science Association.
- Overby, L. Marvin and Timothy B. Krebs. 1992. "Excuses, Excuses: Congressional Adjournment Dates and Incumbent Return Rates, 1946-1990." Presented to the annual meeting of the Midwest Political Science Association.
- Frendreis, John P. and L. Marvin Overby. 1992. "Reversal of Fortune: The Rise and Fall of the Southern Republican Senate Class of 1980." Presented to the annual meeting of the Midwest Political Science Association.
- Overby, L. Marvin. 1991. "Political Amateurism, Legislative Inexperience, and Incumbency Behavior: Southern Republican Senators, 1980-1986." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin and Sarah Ritchie. 1990. "Mobilized Masses and Strategic Opponents: A Resource Mobilization Analysis of the Clean Air and Nuclear Freeze Movements and Their Opponents." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin. 1989. "Inputs and Outcomes of Western Peace Movements: An Application of Kitschelt's Political Opportunities Structures Thesis." Presented to the fourteenth annual European Studies Conference, University of Nebraska-Omaha.
- Overby, L. Marvin. 1989. "The Politics of Parochialism: Southern Senators and the Southern Democracy in the 1980s." Presented to the annual meeting of the American Political Science Association.
- Overby, L. Marvin and Sarah Ritchie. 1989. "Mobilized Masses and Strategic Opponents: A Reassessment of Policy-Making in the Wake of the Clean Air and Nuclear Freeze Movements." Presented to the annual meeting of the Midwest Political Science Association.
- Overby, L. Marvin. 1989. "Assessing Constituency Influence: A Loglinear Model of Congressional Voting on the Nuclear Freeze, 1982-1983." Presented to the annual meeting of the Southwestern Political Science Association.
- Overby, L. Marvin and Kenneth M. Cosgrove. 1988. "A Clash of Conceptions: Democratic Theories and the Ongoing Struggle for Northern Ireland." Presented to the annual meeting of the Western Political Science Association.
- Overby, L. Marvin. 1987. "'Our Peculiar Defects': Tocqueville on the Literature of Democracies." Presented to the annual meeting of the Southern Political Science Association.
- Overby, L. Marvin. 1987. "Implementing the New Federalism: Lessons from the Environmental Protection Agency's National Municipal Policy, 1984-1985." Presented to the fifth Student Pugwash USA International Conference, Stanford University.
- Overby, L. Marvin. 1987. "Politics and Integration: The Case of the Central American Common Market." Presented to the annual meeting of the Institute of Latin American Studies Student Association, University of Texas-Austin.
- Copeland, Gary W. and L. Marvin Overby. 1987. "Legislative Socialization and Inter-Branch Rivalry:

An Empirical Assessment of the Carter and Reagan Presidencies." Presented to the annual meeting of the Southwestern Political Science Association.  
Overby, L. Marvin. 1986. "The Politicization of Principle: The Nuclear Freeze Movement in Congress, 1982-1983." Presented to the annual meeting of the Southern Political Science Association.

### SELECTED PROFESSIONAL ACTIVITIES

Vice president and Program Chair, Southwestern Political Science Association, 2003-2004.  
Executive Director, Southern Political Science Association, 1999-2001.  
Editorial Board, *American Journal of Political Science*, 1998-2001.  
Member, Site Selection Committee, Southwestern Social Science Association, 1999-2002.  
Chair, Nominations Committee, Southwestern Political Science Association, 1997-1998. Committee member, 1996-1998.  
Section Head, "Executives and Legislatures," 1996 Annual Meeting of the Southwestern Political Science Association.  
Editor, *Extensions*, a forum for discussion of the Congress published semi-annually by the Carl Albert Center, 1986-1988.

### COURSES TAUGHT

<i>Undergraduate:</i>	Introductory American Government Legislative Process Comparative Legislatures American Presidency Politics of the American South
<i>Graduate:</i>	Scope and Method of Political Science Seminar in American Legislative Politics Seminar in Southern Politics Seminar in American Political Institutions

### PERSONAL GRANTS and LEAVES

Research Board, University of Missouri System, "The Institutionalization of Colonial and State Legislatures: 1781-1824 The Institutionalization of Colonial and State Legislatures: 1781-1824." 2005-2007. \$13,400. With Jay Dow.  
Center for Arts and Humanities, University of Missouri. "Research Travel to Washington, DC, for Archival Work on the History of the Filibuster in the United States Senate." Fall 2004, \$500.  
Faculty International Travel Award, "Travel to the Scientific Meeting of the International Society for Political Psychology, Lund, Sweden." Office of Research, University of Missouri, Summer 2004, \$1,500.  
Global Scholars Summer Seminar in Russia, International Studies Center, University of Missouri, June 2004.

- Faculty Research Grant, "The Politics of Same-Sex Rights in Canada: An Examination and Analysis of Recent Provincial, Judicial, and Parliamentary Developments," Canadian Studies Program, Government of Canada, Summer 2004, \$7,000.
- Internationalizing the Curriculum Award, International Center, University of Missouri, Fall 2003, \$1,000.
- National Endowment for the Humanities Summer Seminar, "American Constitutionalism in Comparative Perspective," University of Notre Dame, Summer 2003, \$3,700.
- Sabbatical Leave, "The Etiology and Implications of Public Opinion Regarding Congressional Leaders," University of Mississippi, Fall 2001
- Canadian Studies Faculty Enrichment Grant, "Development of a Syllabus for a Course on Canadian Politics," Government of Canada, Summer 1999, \$4,500.
- Faculty Development Grant, "Travel to the Scientific Meeting of the International Society for Political Psychology, Krakow, Poland." College of Liberal Arts, University of Mississippi, Summer 1997, \$800.
- Faculty Research Small Grant, "The Roots of Cooperative Behavior in the U. S. Senate: Rational Choice or the Norm of Reciprocity?" Office of Research, University of Mississippi, Summer 1996, \$1,000.
- Faculty Development Grant, "Travel to the Annual Meeting of the Southwestern Political Science Association," College of Liberal Arts, University of Mississippi, Spring 1996, \$400.
- Faculty Development Grant, "Travel to the Annual Meeting of the Canadian Political Science Association, Montreal, Quebec." College of Liberal Arts, University of Mississippi, Summer 1995, \$425.
- Faculty Research Grant, "Free Voting in Canada: An Examination of the Federal and Selected Provincial Parliaments," Canadian Studies Program, Government of Canada, Summer 1994, \$5,000.
- Faculty Summer Support Grant, "Unintended Consequences: Race-Based Redistricting and the Representation of Minority Interests," Office of Research, University of Mississippi, Summer 1994, \$4,000.
- Partner's Grant, "Purchase of a Laptop PC for Off-Campus Research Activities," Chancellor's Office, University of Mississippi, Spring 1994, \$1,000.
- Paid Leave of Absence, "Inexperienced Amateurs, Vulnerable Incumbents, and Political Change: Southern Republicans in the House of Representatives, 1946-1990," Loyola University Chicago, Spring semester 1994 (declined).
- Summer Research Stipend, "Exploring the Roots of Legislative Committee Strength: An Empirical Test of the 'Ex Post Veto' Hypothesis," Loyola University Chicago, Summer 1993, \$4,000 (declined).
- Research Support Grant, "Inexperienced Amateurs, Vulnerable Incumbents, and Political Change: Southern Republicans in the House of Representatives, 1946-1990," Loyola University Chicago, Summer 1992, \$1,200.
- Research Support Grant, "Excuses, Excuses: Congressional Adjournment Dates and Incumbent Return Rates, 1946-1990," Loyola University Chicago, Summer 1991, \$1,000.
- Thomas J. Watson Fellowship, "The Role of the European Communities in Cross-Border Irish Relations," Thomas J. Watson Foundation, 1983-84, \$10,000.

**FUNDED ACTIVITIES and GRANTS (University of Mississippi Social Science Research Laboratory)**

- "Mississippi Alliance for Prevention — Evaluation Component," Governor's Office and Mississippi Department of Mental Health, 2001-2004, \$404,000. "Assessment of the Mississippi Pilot Tobacco Program: Teen-Oriented, Anti-Tobacco Media Campaign," Mississippi Department of Health, 1999-2000, \$300,000.
- "Assessment of the Crime and Security Needs of Elderly Mississippians," Mississippi Leadership

- Council on Aging, Spring-Summer 1999, \$31,000.
- "Retirement Community Feasibility Study," City of Aberdeen Chamber of Commerce, Summer - Fall 1997, \$75,000.
- "User Satisfaction Survey for Library Re-Accreditation," John Davis Williams Library, University of Mississippi, Spring 1997, \$750.
- "Survey of Political Science Departments," American Political Science Association, Spring 1997, \$7,500.
- "Coahoma Community College Needs Assessment," Coahoma Community College, Spring 1997, \$24,092.
- "Network Infrastructure Upgrade for the Social Science Research Laboratory," University of Mississippi Associates Grant, Spring 1997, \$7,215.
- "1996 Mississippi Elderly Needs Assessment Study," Mississippi Department of Human Services (coordinated with Dr. JoAnn O'Quin), Spring 1996, \$113,800.
- "Planning and Development District Elderly Needs Assessment," Mississippi Association of Planning and Development Districts, Spring 1996, \$57,400.
- "Public, Student, Teacher, and Staff Perceptions in the Oxford School District," Oxford School District, Spring 1996, \$12,500.
- "Needs Assessment/Marketing Survey for the University of Mississippi's Branch Campuses in Tupelo and Southaven," Chancellor's Office and the Office of Public Relations at the University of Mississippi, and the Ramey Agency, Fall 1995, \$42,300.
- "Public Perceptions of Bias in the Mississippi Courts," the Supreme Court of Mississippi's Committee on Bias in the Courts (in collaboration with Dr. John W. Winkle, III), Fall 1995.
- "Public Attitudes About the Mississippi Judiciary," the Mississippi Judicial Advisory Study Committee (in collaboration with Dr. John W. Winkle, III), Fall 1995, \$25,000.
- "Needs Assessment Survey," Division of Child and Family Services, Mississippi Department of Human Services, Spring 1995, \$16,500.
- "Public Attitudes Towards Sports Gambling," Mississippi Gaming Commission (coordinated with Mississippi State University's Social Science Research Center), Winter 1995, \$7,500.

#### RECENT INVITED PRESENTATIONS

- Nanjing University, "Black Elite Electoral Success and Public Feelings of Empowerment," December 2005.
- Johns Hopkins University-Nanjing University Center for Chinese and American Studies, "Supreme Court Appointments: Process and Politics," October 2005
- Gaines/Oldham Black Culture Center, University of Missouri, "The Rights of All: Blacks and the U. S. Constitution," October 2004.
- All-China Youth Federation Delegation, Asian Affairs Center, University of Missouri, "Public Opinion in the United States," May 2004
- University of Missouri Working Group on Canadian Studies, "Of Provinces, Parliaments, Parties, and Procedures: The Case of 'Same-Sex' Legislation in Ontario," December 2002.
- Harry F. Byrd Visiting Scholar, James Madison University, "The Rise and Stall of the Republican Party in the South," October 2002.
- Mary Baldwin College, "In a Free Country: Political Parties in the United States," October 2002.
- University of Missouri, "Committee Outliers in State Legislatures: A Counting Of and Accounting for Unrepresentative Committees in the Statehouse," January 2002.
- University of Arkansas, "Minority Empowerment in the South: An Examination of Public Attitudes Toward the Judiciary in Mississippi," January 2002.
- Peter Pazmany Catholic University (Budapest, Hungary), "You Can't Understand One Without the Other: Southern Politics and American Politics in the 20<sup>th</sup> Century," April 2001.
- Georgia State University, "Committee Outliers in State Legislatures: Data and Observations from a Forty-five State Sample," March 2001.

University of Debrecen (Debrecen, Hungary), "Representation of Minority Interests in the United States: Historical Development and Contemporary Issues," November 2000.  
Samford University, "Damned if You Do, Damned if You Don't: Contemporary Congressional Leadership and the Dilemma of Public Opinion," March 2000.  
Vanderbilt University, "Outliers in the Statehouse: An Examination of Committee Outliers in American State Legislatures," November 1999.

## **SELECTED UNIVERSITY SERVICE**

### **University of Missouri**

Campus Writing Board, 2004-2007  
Committee on Academic Appeals, College of Arts and Science, 2004-2005.  
Chair, Lectureship in American Traditions and Values Committee, College of Arts and Sciences, 2003-2004.  
Executive Committee, College of Arts and Sciences, 2003-2004, 2006-2009.  
Executive Committee, Department of Political Science, 2002-2004, 2004-2006.  
Chair, Recruitment Committees, Department of Political Science, 2002-2003, 2003-2004, 2004-2005, 2006-2007.  
Multicultural Studies Committee, Office of the Vice Provost for Undergraduate Studies, 2002-2003.

### **University of Mississippi**

Planning Committee, Symposium on the Scientific, Ethical, Legal, and Societal Implications of Stem Cell Research, 2001-2002  
Faculty Senate, 1998-2000, 2002.  
Chair, Faculty Governance Committee, 2002.  
Chair, General Academic Affairs Committee, 1999-2000.  
Member, Senate Executive Committee, 1999-2000, 2002.  
Housing Judicial Council, 1999-2000.  
Committee on Academic Freedom and Faculty Responsibility, 1999-2000.  
Academic Discipline Committee, 1998-2000, 2001-2002.  
Director of Graduate Studies, Department of Political Science, 1994-1997.

### **Loyola University Chicago**

Graduate Fellowships Committee, Graduate School, 1992-1993.  
Graduate Committee, Department of Political Science, 1992-1993.  
Faculty Coordinator, Loyola-Catholic University Washington Semester Exchange Program, College of Arts and Science, 1991-1992.

## **TEACHING AWARDS**

Cora Lee Graham Award for Outstanding Teaching of Freshman Students, College of Liberal Arts, University of Mississippi, 1999

## **GRADUATE HONORS**

Carl Albert Fellowship, University of Oklahoma, 1985-1990.  
Congressional Fellowship, American Political Science Association, 1988-1989 (Legislative Assistant to Rep. David E. Price, D-N.C.).  
Harriet Harvey Memorial Scholarship, University of Oklahoma, 1988-1989.  
John H. Leek Memorial Scholarship, Department of Political Science, University of Oklahoma, 1987 and 1988.

**Jeffrey Milyo**  
**Associate Professor of Economics and Public Affairs**  
**University of Missouri**

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**ADDRESS**

University of Missouri, 118 Professional Building, Columbia, MO 65211  
Phone: (573) 882-7785; Fax: (573) 882-2697  
Email: milyoj at missouri dot edu; <http://www.missouri.edu/~milyoj/>

**EDUCATION**

Stanford University, Ph.D. in Economics with a minor in Business, 1994

University of Connecticut, B.A. and M.A., *summa cum laude*, in Economics, 1986

**PROFESSIONAL EMPLOYMENT**

University of Missouri, Department of Economics and Truman School of Public Affairs;  
Associate Professor, 2004-

University of Chicago, Harris School of Public Policy; Assistant Professor, 2000-04

Tufts University, Department of Economics, Assistant Professor, 1994-2000

**AFFILIATIONS**

*Senior Fellow*, Cato Institute, Washington, D.C., 2006-

*Research Affiliate*, Center for Applied Economics, University of Kansas School of Business,  
2006-

*Academic Advisor*, Center for Competitive Politics, Washington, D.C., 2006-

*Center for Health Policy*, University of Missouri, 2006-

*Joint Center for Poverty Research*, University of Chicago; 2000-2004

August 2006

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## RESEARCH GRANTS

University of Missouri Research Board, 2005-2006; "The Effects of Social Capital on the Well-Being of Young Adults" (PI; \$20,000)

Robert Wood Johnson, Substance Abuse Policy Research Program, 2004-2005; "Estimating the Effects of Political Contributions on State Alcohol and Tobacco Policies," with Myoung Lee (Co-PI; \$17,500)

Robert Wood Johnson, Substance Abuse Policy Research Program, 2004-2005; "The Effects of State Campaign Finance Reforms on Tax Policy toward Alcohol and Tobacco," with Jeff Kubik and John Moran (PI; \$40,000)

National Science Foundation, 2003-2005; "A Theoretical and Empirical Investigation of the Returns to Legislative Oversight," with Sean Gailmard. (\$181,525; PI)

Cultural Policy Center, University of Chicago, 2003; "Social Capital and Support for the Arts" (PI; \$5,000)

Tufts University, Faculty Research Fund, 1998-1999; "Electoral Effects of Incumbent Wealth" (PI; \$1,000)

## HONORS AND AWARDS

*Hanna Family Scholar*, Center for Applied Economics, University of Kansas, 2006-

*Gordon Moore Visiting Scholar*, Stanford Institute for Economic Policy Research, Stanford University, July 2006

*Gerson-Lehrman Group Scholar*, Gerson-Lehrman Group, Washington, D.C., 2005.

*Robert Wood Johnson Health Policy Fellow*, Institute for Social and Policy Studies, Yale University, 1997-1998

*Salvatori Fellow*, Heritage Foundation, Washington, D.C., June 1997.

*Harvard-MIT Political Economy Fellow*, Massachusetts Institute of Technology, 1996-1997

Named one of the best teachers at Tufts University by *Choosing the Right College*, Intercollegiate Studies Institute (Wm. B. Eerdmans Publishing: Grand Rapids, MI), 2000

Named one of the 10 best teachers at Tufts University by *The Primary Source* (an undergraduate student publication), 1996



## PUBLICATIONS

### JOURNAL ARTICLES:

- (24) "Estimating the Impact of State Policies and Institutions with Mixed-Level Data," with David Primo and Matthew Jacobsmeier; *State Politics and Policy Quarterly* (forthcoming).
- (23) "A Social Science Perspective on Media Bias," with Tim Groseclose; *Critical Review*, 17:3-4: 305-314.
- (22) "Induced Heterogeneity in Trust Experiments," with Lisa Anderson and Jennifer Mellor; *Experimental Economics*, 9:223-235.
- (21) "Campaign Finance Laws and Political Efficacy: Evidence from the States," (2006) with David Primo; *Election Law Journal*, 5(1): 23-39.
- (20) "A Measure of Media Bias," (2005) with Tim Groseclose; *Quarterly Journal of Economics*, 120(4):1191-1237 [lead article].
- (19) "State Social Capital and Individual Health Status," (2005) with Jennifer Mellor; *Journal of Health Politics Policy and Law*, 30(6): 1101-1130.
- (18) "Social Capital and Contributions in a Public Goods Experiment," (2004) with Lisa Anderson and Jennifer Mellor; *American Economic Review (Papers and Proceedings)*, 94(2): 373-376.
- (17) "Individual Health Status and Minority Racial Concentration in U.S. States and Counties," (2004) with Jennifer Mellor; *American Journal of Public Health*, 94(6): 1043-1048.
- (16) "On the Importance of Age-Adjustment Methods in Ecological Studies of Social Determinants of Mortality," (2003) with Jennifer Mellor; *Health Services Research* 38(6.2): 1781-1790.
- (15) "Is Exposure to Income Inequality a Public Health Concern? Lagged Effects of Income Inequality on Individual and Population Health," (2003) with Jennifer Mellor; *Health Services Research* 38(1.1) 137-151.
- (14) "Income Inequality and Health Status in the United States: Evidence from the Current Population Survey," (2002) with Jennifer Mellor; *Journal of Human Resources*, 37(3): 510-539.
- (13) "Income Inequality and Health," (2001) with Jennifer Mellor; *Journal of Policy Analysis and Management*, 20(1): 151-155.

- (12) "Re-Examining the Ecological Association Between Income Inequality and Health," (2001) with Jennifer Mellor; *Journal of Health Politics, Policy and Law*, 26(3): 485-518 [lead article].
- (11) "What Do Candidates Maximize (and Why Should Anyone Care)?" (2001); *Public Choice*, 109(1/2): 119-139.
- (10) "A Problem with Euclidean Preferences in Spatial Models of Politics," (2000); *Economics Letters*, 66(2): 179-182.
- (9) "Logical Deficiencies of Spatial Models: A Constructive Critique," (2000); *Public Choice*, 105(3/4): 273-289.
- (8) "Gender Bias and Selection Bias in House Elections," (2000) with Samantha Schosberg; *Public Choice*, 105(1/2): 41-59.
- (7) "Corporate PAC Campaign Contributions in Perspective," (2000) with Tim Groseclose and David Primo; *Business and Politics*, 2(1): 75-88.
- (6) "Is Income Inequality Bad for Your Health," (2000) with Jennifer Mellor; *Critical Review*, 13(3/4): 359-372.
- (5) "The Effects of Price Advertising on Prices: Evidence from 44 Liquormart," (1999) with Joel Waldfogel; *American Economic Review*, 89(5): 1081-1096. Reprinted in *The Economics of Advertising*. Edited by Kyle Bagwell. Edward Elgar Publishing: London.
- (4) "The Electoral Effects of Incumbent Wealth," (1999) with Tim Groseclose; *The Journal of Law and Economics*, 42(2): 699-722.
- (3) "The Political Economics of Campaign Finance," (1999); *The Independent Review*, 3(4): 537-548.
- (2) "The Economics of Political Campaign Finance: FECA and the Puzzle of the Not Very Greedy Grandfathers," (1997); *Public Choice*, 93: 245-270.
- (1) "Electoral and Financial Effects of Changes in Committee Power: Gramm-Rudman-Hollings, the Tax Reform Act of 1986, and the Money Committees in the House," (1997); *The Journal of Law and Economics*, 40(1): 93-112.

*CONTRIBUTIONS TO EDITED VOLUMES:*

- (4) "State Campaign Finance Reforms, Competitiveness and Party Advantage in Gubernatorial Elections," (2006) with Tim Groseclose and David Primo; in *The Marketplace of Democracy*. Michael McDonald and John Samples, Editors. (Brookings Institution and Cato Institute: Washington, DC).
- (3) "Campaign Finance," (forthcoming); in the *Concise Encyclopedia of Economics*, 2<sup>nd</sup> Edition. D. Henderson, Editor. Liberty Press (Indianapolis, IN).
- (2) "Do Liberals Play Nice? The Effects of Political Party and Ideology in Public Goods and Trust Games," (2005), with Lisa Anderson and Jennifer Mellor; in *Advances in Applied Microeconomics: Experimental and Behavioral Economics*. John Morgan, Editor. (JAI Press: Stamford, Connecticut).
- (1) "Reform without Reason: the Scientific Method and Campaign Finance," (2005) with David Primo; in *Taxpayer Financing of Political Campaigns*. John Samples, Ed. Cato Institute: Washington, DC.

*COMMENTS, COMMUNICATION AND REVIEWS:*

- (6) "On the Use of Age-Adjusted Mortality Rates in Studies of Income Inequality and Population Health," (2002) with Jennifer Mellor; *Journal of Health Politics, Policy and Law*, 27(2): 293-296.
- (5) "Bribes and Fruit Baskets: What Does the Link Between PAC Contributions and Lobbying Mean?" (2002); *Business and Politics*, 4(2): 157-160.
- (4) "Exploring the Relationships Between Income Inequality, Socioeconomic Status, and Health: A Self-Guided Tour?," (2002) with Jennifer Mellor; *International Journal of Epidemiology*, 31(3):685-687
- (3) "Income Distribution, Socioeconomic Status and Self-Rated Health in the United States," (1999); *British Medical Journal*, 318: 1417.
- (2) Review of Brown, Powell and Wilcox, *Serious Money: Fundraising and Contributing in Presidential Nomination Campaigns* (1997), *Political Science Quarterly*, 112(2): 321.
- (1) Review of Alesina and Rosenthal, *Partisan Politics, Divided Government, and the Economy*, (1996), *Journal of Politics*, 58:559-561.

*POLICY REPORTS:*

- (4) "Public Financing of Campaigns," (2006) Federalist Society for Law and Public Policy Studies (Washington, DC).
- (3) "Social Capital and Support for Public Funding of the Arts," (2004); Cultural Policy Center, University of Chicago.
- (2) "What Does Academic Research Tell Us About the Role of Money in American Politics?" (2002); Federalist Society for Law and Public Policy Studies (Washington, DC).
- (1) "The Electoral Effects of Campaign Spending in House Elections," (1998); Citizens' Research Foundation: Los Angeles.

*SELECTED WORKING PAPERS:*

- (10) "Inequality and Public Good Provision: An Experimental Analysis," with Lisa Anderson and Jennifer Mellor; under review at *Journal of Socio-Economics* (first revision).
- (9) "A Rational-Choice Formal-Theoretic Argument Against the Existence of Sophisticated Voting in Legislatures," with Tim Groseclose; under review at the *Quarterly Journal of Political Science*.
- (8) "Did the Devil Make Them Do It? The Effects of Religion and Religiosity in Public Goods and Trust Games," with Lisa Anderson and Jennifer Mellor; under review at *Public Choice*.
- (7) "The Effects of State Campaign Finance Laws on Voter Turnout, 1950-2000," with David Primo; under revision.
- (6) "Sex, Power and Money: Market Reaction to a Political Scandal, with Scott Smart.
- (5) "Long-Run Effects of Price Advertising on Prices," with Joel Waldfogel; under revision.
- (4) "Policy Consequences of State Campaign Finance Reforms: Evidence from Excise Taxes on Alcohol and Tobacco," with Jeff Kubik and John Moran.
- (3) "Political Determinants of State Medicaid Generosity," with Reagan Baughman.
- (2) "Political Economics of Legislative Oversight," with Sean Gailmard.
- (1) "An Economic Approach to Social Capital: Lessons from Game Theory and Experimental Economics," with Lisa Anderson and Jennifer Mellor.

## **INVITED PROFESSIONAL PRESENTATIONS:**

1994-95: Public Choice Society, Harvard University, Midwest Political Science Assoc. and MIT

1995-96: Midwest Political Science Assoc., Harvard University, University of Connecticut

1996-97: American Economics Assoc., Public Choice Society, Midwest Political Science Assoc., Institute for Humane Studies, Ohio State University, MIT, Georgia State University.

1997-98: Trinity College, Yale University, Public Choice Society, Midwest Political Science Assoc., Tufts University, American Law and Economics Assoc., Robert Wood Johnson Health Policy Conference and National Bureau of Economic Research Summer Workshop.

1998-99: American Political Science Assoc., George Mason University, William and Mary, Harvard University, Stanford University, Yale University, UC-Berkeley, University of Chicago, Public Choice Society, Bowdoin College, Robert Wood Johnson Health Policy Conference, and National Bureau of Economic Research Summer Workshop.

1999-2000: University of Rochester, University of Delaware, Syracuse University, Carnegie Mellon University, Claremont-McKenna College, American Economics Assoc., University of Chicago and American University.

2000-2001: Dartmouth College, Midwest Political Science Assoc., Public Choice Society and University of Chicago.

2001-2002: American Enterprise Institute, Association for Public Policy Analysis and Management, Midwest Political Science Assoc. and University of Michigan.

2002-2003: American Economics Assoc., Association for Public Policy Analysis and Management, Midwest Political Science Assoc., Naval Postgraduate School and the Public Choice Society.

2003-2004: American Economics Assoc., American Political Science Assoc., Midwest Political Science Assoc., University of Minnesota, University of Missouri, Vanderbilt University, University of Virginia, Williams College and Yale University.

2004-2005: American Economics Assoc., American Political Science Assoc., Brigham Young University, University of Connecticut, and Washington University.

2005-2006: American Economics Association, Cato-Brookings, George Mason University, Midwest Political Science Association, University of Kansas, University of Kentucky, University of Missouri, University of Wisconsin.

## MEDIA APPEARANCES

### INTERVIEWS AND CITATIONS:

I have been interviewed or cited in connection with my scholarly research and as a policy expert more than 50 times in the major electronic and print media. Most recent electronic media appearances include interview segments on Fox News and MSNBC, and citations to my research on CNN, CSPAN, FOX News, National Public Radio and the *Drudge Report*. Major newspaper and news magazine citations include the *New York Times*, *Washington Post*, *USA Today*, *Chicago Tribune*, *Boston Globe*, *San Francisco Chronicle*, *St. Louis Post Dispatch*, *Detroit News*, the *Rocky Mountain News*, the *Washington Monthly*, the *Investors' Business Daily*, *Business Week*, *National Review*, the *Weekly Standard*, the *Chronicle of Higher Education*, *Human Events* and *The New Criterion*.

### OPINION ESSAYS:

- (8) "The High Court, Hoodwinked on Finance Data," (2006) with David Primo; *Roll Call*, June 15.
- (7) "Contribution Limits Silence Missouri Voters," (2006) with John Samples; *Columbia Daily Tribune*, June 13.
- (6) "Clean Elections Offer False Hope," (2005); *Connecticut Post*, February 20: p. B2.
- (5) "The Political Process Works," (2002); *USAToday*, October 2: p. 19A.
- (4) "Not Enough of a Good Thing," (2001); *Chicago Sun Times*, January 26: p. 39.
- (3) "Reform the Debate," (1999); *IntellectualCapital.Com*, September 9-16.
- (2) "Money Walks: Why Campaign Contributions Aren't as Corrupting as You Think," (1997); *Reason*, 29(3): 47-49. Reprinted in *Stand! American Government* (2000). Edited by Denise Scheberle. Coursewise Publishing, Inc.: Madison, WI.
- (1) "Lost Shepard," (1996) with Tim Groseclose; *The American Spectator*, 29(4): 55.

**FISCAL ESTIMATE WORKSHEET**

**Fiscal Note:** 4947-01

**OVERVIEW-QUESTIONS**

**Bill No.:** SB 1014

Return to Worksheet (double-click link) For form assistance, press F1 or refer to worksheet instructions.

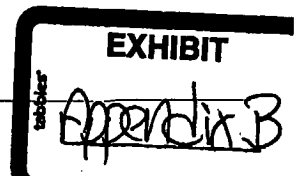
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<b>Agency:</b>	Department of Revenue	<b>Date:</b>	02/10/06
<b>Preparer's Signature:</b>	Brad Brester	<b>Telephone:</b>	573-526-2723
<b>Approval Signature:</b>	Michael Morris	<b>E-Mail:</b>	<a href="mailto:Brad.Brester@dor.mo.gov">Brad.Brester@dor.mo.gov</a>

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1. Is this legislation federally mandated?  Yes  No  
(If yes, cite specific law, court order or federal regulation.)
  
2. Does this proposal duplicate any other program? (Specify program and administering agency. Include applicable statutes or regulations.)  
  
No
  
3. Does this proposal affect any other state agency or political subdivision? If so, which ones?  
Yes, Secretary of State's Office
  
4. Will legislation result in a need for any additional capital improvements or rental space? (Give details for cost, square feet, location, etc.)  
No.
  
5. Are any costs related to this proposal included in your current budget request?  
No.
  
6. Will this legislation have an economic impact on small business?  
No.
  
7. If you are including any costs for information technology (computers, video, communications, bandwidth, SAM II hookups, programming, software, outside

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consulting, state data center charges, etc.) in the fiscal note response, have they been reviewed by the Office of Administration - Information Technology Services.

Yes  No (If no, why not?)

8. Will this legislation directly affect Total State Revenue? X Yes  No

(If yes, explain how.) Yes, see #12

9. Please summarize how this bill would affect your agency.

Section 115.427.7 -

- Requires DOR to issue a nondriver license and waive the fee required under subsection 7 of 302.181 to any applicant who signs an affidavit verifying they do not have any other form of photographic personal identification (nondriver license) that meets subsection 1, which basically requires the document to be issued by the United States or state of Missouri. In addition, DOR must design and provide the affidavit that is required.
- Requires DOR to provide access to a mobile voter processing system to obtain the photograph and signature to produce the nondriver license for individuals that are physically unable to otherwise visit contract offices, because they are residents of facilities licensed under chapter 198, RSMo and they a physician statement to that affect.
- The total cost for processing and issuing any nondriver license photo identification must be paid for by the state through an appropriation to the Department of Revenue.
- Local election authorities may assist the department in issuing nondriver license photo identifications.

10. Long-range implications.

N/A

11. If this is a REVISED Fiscal Estimate Worksheet, please explain reason for revision.

N/A

12. Assumptions and methodology used in arriving at state fiscal impact. (List all references, personnel, and expenses and equipment to be requested by program in the bill. Include specific duties and responsibilities for new employees listed.)

### ADMINISTRATIVE IMPACT

*Constitutional Amendment 3 (2004) authorizes 3% of highway funds to be used to offset the actual cost to collect such funds by the Department of Revenue.*

*For purposes of this fiscal note, the department of revenue assumes all costs will be appropriated from the general revenue fund. Through the appropriations process, the general assembly may appropriate the constitutionally permissible highway fund amount to offset the general revenue fund cost shown in this fiscal note.*

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# FISCAL NOTE WORKSHEET

Fiscal Note: 4947-01  
Bill Number: SB 1014

Agency: Department of Revenue  
Analyst: Brad Brester

Phone: 526-2723

The department assumes that based on the language as written it would affect residents of facilities licensed under chapter 198 and any individual who does not otherwise now have a nondriver license.

41,536	Residents of facilities licensed under chapter 198 who are not likely to be physically able to ambulate to a polling site. <i>(based on statistics from the Department of Health and Senior Services as of January 11, 2006)</i>
<u>x 5%</u>	Estimated number of citizens who are eligible and may apply for a no cost nondriver license
<b>2,077</b>	<b>Estimated annual nondriver licenses applicants</b>

DOR assumes that field coordinators will provide mobile service to individuals that are physically unable to otherwise visit contract offices, because they are residents of facilities licensed under chapter 198, RSMo, who request a nondriver license photo identification and provide a physician's statement to such affect. Based on the estimated volume of applicants the department assumes that current staff levels will be sufficient to provide this service.

The department currently does not have mobile equipment to create a nondriver license; therefore, will incur costs for purchasing cameras and scanners to obtain the photographs and signatures required to produce the nondriver license. The photograph and signature will be electronically transmitted to the central office to create the nondriver license and to be mailed to the resident.

\$ 300      Sony Cyber-Shot 7.2MP  
x 14      Field Coordinators  
\$4,200

\$ 200      Scanners  
x 14      Field Coordinators  
\$2,800

Based on the current language as written the number of individuals who currently do not have a photographic personal identification would now be eligible for one at no cost, in addition the language can be interpreted to allow individuals who simply sign the affidavit even though they had or have an acceptable photographic personal identification to now obtain a nondriver at no cost.

The department used the Census for Missouri that showed 4,167,519 individuals 18 or older, then ran a program that indicates there are 3,998,304 individuals currently on the DOR system. Therefore, there are approximately 169,215 individuals who do not have a photographic personal identification.

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**FISCAL NOTE WORKSHEET**

**Fiscal Note: 4947-01  
Bill Number: SB 1014**

**Agency: Department of Revenue  
Analyst: Brad Brester**

**Phone: 526-2723**

138,063	Estimated number of individuals who do not currently have a photographic personal identification. <i>(based on the census population of individuals 18 and older, compared to the driver license system = 169,215 AND minus 75% of the individuals previously shown that are residents under chapter 198 = 41,536 x 75% = 31,152)</i>
<u>x 50%</u>	Estimated number of individuals who will apply for a nondriver license. <i>(based on a four average voter turnout for Missouri)</i>
<b>69,032</b>	<b>Potential nondriver license applicants first year of implementation only</b>

In addition, because the language allows a person to apply for a nondriver license to simply sign an affidavit indicating they do not have a photographic personal identification, applicants who apply for a new, renewal or duplicate nondriver license may do so at no cost.

88,989	Total number of nondriver (new, renewal, duplicate) transactions issued in 2005
<u>x 25%</u>	Estimated number of applicants that would utilize the affidavit indicating that they do not have any other form of photographic personal identification; therefore, would be eligible for a nondriver license at no fee
<b>22,247</b>	<b>Estimated annual nondriver license applicants</b>

The department will also incur forms, envelopes and postage cost for printing the license and mailing the license to individuals who are not physically able to ambulate to a polling site. In addition, the department will incur costs for providing an affidavit to individuals applying for nondriver license (no cost).

**FY07, FY08 & FY09**

2,077  
x \$ .43 (\$ .04 envelope & \$.39 postage, licensing material cost is shown in volume below)  
 \$ 893

**FY07**

93,356 Estimated number of applicants that will apply for a nondriver license  
x \$1.86 Licensing material  
 \$173,642

**FISCAL NOTE WORKSHEET**

**Fiscal Note: 4947-01  
Bill Number: SB 1014**

**Agency: Department of Revenue  
Analyst: Brad Brester**

**Phone: 526-2723**

**FY08 & FY09**

24,324	Estimated number of annual applicants that will apply for a nondriver license
<u>x \$1.86</u>	Licensing material
\$ 45,243	

**FY07**

91,279	Estimated number of applicants that will require an affidavit
<u>x \$.025</u>	Affidavit
\$ 2,282	

**FY08 & FY09**

22,247	Estimated number of applicants that will require an affidavit
<u>x \$.025</u>	Affidavit
\$ 556	

**REVENUE IMPACT**

Because the language requires the nondriver license to be provided by the department to an applicant who signs an affidavit stating that they do not have any other form of photographic personal identification at no cost there will be a potential loss in revenue as indicated below.

This proposal has an emergency clause; therefore, it becomes effective the date the Governor signs the bill. For purposes of this fiscal the revenue decrease is calculated for a full twelve months of FY07.

**FY07**

2,077	Annual applicants for nondriver license from a chapter 198 residents
69,032	Applicants that have never had a nondriver license the will only apply the first year of implementation
<u>+22,247</u>	Annual applicants for new, renewal or duplicate
<b>93,356</b>	<b>Estimated nondriver license</b>
<u>x \$6</u>	Nondriver license fee
<b>\$560,136</b>	<b>Total potential revenue decrease</b>

**FY08 & FY09**

2,077	Annual applicants for nondriver license from a chapter 198 residents
<u>+ 22,247</u>	Annual applicants for new, renewal or duplicate
<b>24,324</b>	<b>Estimated nondriver license</b>
<u>x \$6</u>	Nondriver license fee
<b>\$145,944</b>	<b>Total potential revenue decrease</b>

**FISCAL NOTE WORKSHEET**

**Fiscal Note: 4947-01**  
**Bill Number: SB 1014**

**Agency: Department of Revenue**  
**Analyst: Brad Brester**

**Phone: 526-2723**

**Technical Memo**

**Technical Errors:**

The department assumes that all lawful presence requirements will still be required and state funds will not be utilized to obtain those documents.

In addition, if the intent of this proposal is to not require the collection of the processing fee required pursuant to section 136.055, RSMo, language should be added to section 115.427 to clarify that there is no processing fee required.

**FISCAL NOTE WORKSHEET**

**Fiscal Note: 4947-01**

**Bill Number: SB 1014**

**Agency: Department of Revenue**

**Analyst: Brad Brester**

**Phone: 526-2723**

**Comment Memo**

**Comments:**

The department assumes that all lawful presence requirements will still be required and state funds will not be utilized to obtain those documents.

In addition, if the intent of this proposal is to not require the collection of the processing fee required pursuant to section 136.055, RSMo, language should be added to section 115.427 to clarify that there is no processing fee required.

**RR**

Premium Members Only

## Thoughts on the Voting System in the United States

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Surveys conducted July 17 - August 15, 2006. Click on State for details.

(Question wording below table)

Thoughts on the voting system in the United States											
	Driver's License		English		Eligible prevented		Ineligible allowed		Badly broken		
	Yes	No	Only	Spanish	Yes	No	Yes	No	Yes	No	
<b>AK</b>	81	13	62	34	x	x	x	x	50	32	<b>AK</b>
<b>AL</b>	88	9	70	29	19	53	31	40	56	31	<b>AL</b>
<b>AR</b>	86	10	69	27	18	51	24	41	51	35	<b>AR</b>
<b>AZ</b>	85	11	68	30	20	51	36	33	58	29	<b>AZ</b>
<b>CO</b>	85	9	67	28	18	51	22	41	49	38	<b>CO</b>
<b>FL</b>	92	5	58	39	27	47	32	38	53	34	<b>FL</b>
<b>GA</b>	78	18	70	27	23	55	30	42	53	31	<b>GA</b>
<b>HI</b>	85	10	56	37	26	41	20	47	48	36	<b>HI</b>
<b>IA</b>	78	16	67	30	20	43	18	39	54	34	<b>IA</b>
<b>IL</b>	79	13	62	37	27	47	28	46	50	34	<b>IL</b>
<b>KS</b>	79	14	68	29	15	53	23	40	49	32	<b>KS</b>
<b>MA</b>	84	19	56	42	30	41	24	44	56	30	<b>MA</b>
<b>MD</b>	82	12	54	42	31	42	24	44	57	30	<b>MD</b>
<b>ME</b>	67	24	61	34	27	43	26	41	59	29	<b>ME</b>
<b>MI</b>	78	16	66	32	24	46	26	37	56	32	<b>MI</b>
<b>MN</b>	83	13	58	39	23	51	26	38	53	32	<b>MN</b>
<b>MT</b>	84	11	72	25	19	55	30	35	57	31	<b>MT</b>
<b>NE</b>	81	13	78	19	14	58	23	42	47	35	<b>NE</b>
<b>NJ</b>	74	16	62	34	26	42	22	43	54	32	<b>NJ</b>
<b>NV</b>	87	11	71	28	19	46	33	30	55	34	<b>NV</b>
<b>NY</b>	73	17	52	45	34	37	22	45	61	28	<b>NY</b>
<b>OH</b>	76	18	69	27	28	46	27	40	60	29	<b>OH</b>
<b>PA</b>	78	14	68	30	19	49	26	38	58	30	<b>PA</b>
<b>RI</b>	82	11	64	33	25	38	21	33	55	27	<b>RI</b>
<b>SC</b>	80	16	61	37	28	45	24	44	53	31	<b>SC</b>
<b>TN</b>	83	12	77	21	18	49	30	57	56	28	<b>TN</b>
<b>TX</b>	83	13	58	40	22	49	28	33	48	37	<b>TX</b>
<b>VA</b>	80	14	59	37	28	48	23	40	50	36	<b>VA</b>
<b>VT</b>	60	29	49	47	28	40	17	44	63	24	<b>VT</b>
<b>WA</b>	75	15	63	33	24	48	39	35	55	31	<b>WA</b>
<b>WI</b>	78	17	62	33	26	44	30	34	55	31	<b>WI</b>
<b>WV</b>	78	16	71	26	20	38	25	34	59	27	<b>WV</b>

EXHIBIT

Appendix C

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*1\* Should voters be required to show photo identification such as a drivers license before being allowed to vote?*

*2\* Should election ballots be printed in English only or should they be printed in English and Spanish?*

*3\* n most elections, are large numbers of people prevented from voting who should be allowed to vote*

*4\* Okay... in most elections, are large numbers of people allowed to vote who are not eligible to vote?*

*5\* Some people say that America's political system is badly broken. Do you agree?*

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Scott Rasmussen, president of Rasmussen Reports, has been an independent pollster for more than a decade.

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**Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on  
Voter Participation Rates**

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**Revised  
August 18, 2006**

**Abstract**

The results provide some evidence of vote fraud and that regulations that prevent fraud can actually increase the voter participation rate. It is hard to see any evidence that voting regulations differentially harm either minorities, the elderly, or the poor. While this study examines a broad range of voting regulations, it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections. What can be said is that the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted. The evidence provided here also found that campaign finance regulations generally reduced voter turnout.

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<sup>1</sup> The Dean's Visiting Professor. Michael Munger and Clark Bensen provided helpful comments. I would like to thank John Matsusaka for providing me with his Initiative and Referendum Institute's Initiatives Database. The data on voter turnout in general elections; the margin of victories by state for presidential, gubernatorial, and US Senate races; and per capita income by county were provided by Clark Bensen.



## Introduction

The regulations to ensure the integrity of the voting process can reduce the voter participation rate by making it more costly for people to vote. But to the extent that the regulations provide increase people's confidence that their votes will be properly counted, these regulations can actually encourage more people to vote. The trade-offs are everywhere. For example, absentee ballots make voting much more convenient, increasing the rate at which people vote, but some view them as "notorious" sources of voter fraud.<sup>2</sup> There has been some bi-partisan support for stricter registration and ID requirements (e.g., the Carter-Baker commission). Generally, Democrats are concerned that stricter rules will discourage voters, while Republicans think that stricter rules are needed to ensure confidence in the voting process.

Almost 100 countries require photo IDs to vote.<sup>3</sup> Many directly tie voter registration with provision of an ID and only allow an ID that is specifically issued for voting.<sup>4</sup> Some also either do not allow or greatly restrict absentee ballots.<sup>5</sup>

For example, all voters in Mexico must present voter IDs, which include not only a photo but also a thumbprint. The IDs themselves are essentially counterfeit-proof, with special holographic images, imbedded security codes, and a magnetic strip with still more security information. As an extra precaution, voters' fingers are dipped in indelible ink to prevent people from voting multiple times.

Mexican voters cannot register by mail — they have to personally go to their registration office and fill out forms for their voter ID. When a voter card is ready three months later, it is not mailed to the voter as it is in the U.S. Rather, the voter must make a second trip to a registration office to pick it up. The 2006 election was the first since the 1991 reforms in which absentee ballots were available, but only for voters who requested one at least six months before the election.<sup>6</sup>

In the U.S. during 2006, three states -- Georgia, Indiana and Missouri -- have adopted regulations requiring that photo IDs be presented before people can vote. Other states are considering following suit, generating heated debate as well as court cases. Some claim that such a requirement would prevent "many people" from voting,<sup>7</sup> but the evidence so far is scant. The primary evidence presented measures the portions of the population who do not possess driver's licenses (Overton, 2006 and Pawasarat, 2005). National Commission on Electoral Reform (2001, p. 77) claims that about 92 percent of

<sup>2</sup> Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.

<sup>3</sup> Building Confidence in U.S. Elections, p. 5.

<sup>4</sup> Ibid.

<sup>5</sup> For example, as a result of fraud in their 1988 Presidential election, absentee ballots were not allowed in Mexico until (see Associated Press, "Mexican Senate approves mail-in absentee ballots for Mexicans living abroad," AZcentral.com, April 28, 2005

(<http://www.azcentral.com/specials/special03/articles/0428mexicovote-ON.html>).

<sup>6</sup> The United Kingdom faced claims of widespread vote fraud from "postal votes" during the 2005 election. Zoe Hughes, "Reform call after postal votes row," The Journal (Newcastle, UK), May 21, 2005, p. 4.

<sup>7</sup> Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.

the voting age population have driver's licenses and that other photo IDs -- such as student IDs, military IDs, employee IDs, and passports -- "probably" only increases this percentage "slightly." Yet, this provides only a very crude measure of whether photo ID requirements will prevent people from voting. Some people without driver's licenses will not vote even when there are no photo ID requirements and others will go out to get a photo ID in order to vote. Just because they don't have a photo ID at some point in time (when they may not have any reason to have such an ID), doesn't imply that they won't get one when they have a good reason to do so.

A better measure of how difficult it is to meet the ID requirement is the percent of registered voters who have driver's licenses (Brace, 2005). But even this measure ignores that people can adjust their behavior and that some of those who currently don't have a photo ID might acquire one once it is required. Others have pointed out that even these estimates are unnecessarily alarmist because the lists of registered voters have not been updated to remove people who have died or moved away, and the statistics thus exaggerate the number of voters who are listed by motor vehicle bureaus as not currently having driver's licenses (Bensen, 2005).

There is also the question of the disparate impact on different groups. Would minorities or the elderly, people who are said to be less able to bear the costs of getting photo IDs be particularly discouraged? The courts, the media, as well as Democratic governors' veto messages have raised concerns over this impact.<sup>8</sup> Again, the existing evidence involves either comparing the percent of adults with photo IDs or the percent of registered voters with driver's licenses.

There is some evidence from other countries, such as Mexico, that strict anti-fraud regulations have actually been associated with increases in voter turnout.<sup>9</sup> Nevertheless, it is difficult to measure the effect of mandatory photo IDs in the United States, and for a simple reason: there has only been one primary election in just one state, Indiana, during 2006 using mandatory photo IDs. The Georgia and Missouri mandatory photo ID laws have not yet gone into effect. Florida, Hawaii, Louisiana, Oklahoma, and South Carolina all had non-mandatory photo ID laws by 2004, with South Dakota joining the group by 2006. In these states, people are asked for photo IDs, but if not available, a wide set of options range from providing non-photo IDs to signing a pledge that the voter is who they say that they are. It remains to be seen whether the mere threat of asking for a photo

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<sup>8</sup> Wisconsin Democratic Governor Jim Doyle vetoed attempts at requiring photo IDs for voting three times and argued that "an ID requirement would keep poor people and the elderly who lack identification from the polls" (Associated Press, "Rule allow votes without license," *The Capital Times* (Madison, Wisconsin, August 5, 2006 <http://www.madison.com/tct/mad/topstories//index.php?ntid=93713>). See also Editorial, "Judge Blocks Requirement in Georgia for Voter ID," *New York Times*, July 8, 2006.

<sup>9</sup> Since the 1991 election reforms in Mexico, there have been three presidential and four congressional elections. In the three presidential elections since the 1991 reforms, 68 percent of eligible citizens have voted, compared to only 59 percent in the three elections prior to the rule changes. However, there is only a very trivial increase for congressional elections. Comparing the four congressional elections prior to the reforms with the four afterwards produces only a one percent increase from 56 to 57 percent. See Klesner (2003) for the turnout data up through the 2003 elections.

ID has any effect on voting behavior. So far no one has investigated the impact of these or other laws on voting participation rates.

Similar concerns that have been raised about regulations requiring non-photo IDs. For example, Tova Andrea Wang with The Century Foundation notes that “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.”<sup>10</sup>

The general question remains to what extent other restrictions affect the voter participation rate and whether the impacts are different across different groups of voters. In the following sections, I will briefly discuss how to test how voting regulations affect turnout and then provide some empirical evidence.

### **Voter IDs on Voter Participation Rates**

Ensuring integrity of the voting process can either increase or decrease voter participation rates. There is an increased cost to voting, decreasing participation, but the increased integrity of the process can also increase the benefits to people voting. Eliminating fraud can also work to reduce the voter participation rate simply because there will be fewer “false” votes.

These three positions are as follows:

- 1) The Discouraging Voter Hypothesis: With little or no fraud to eliminate, the regulations discourage legitimate voters from voting, this hypothesis predicts that to the extent that regulations have any effect they will reduce the number of people who vote. Critics of stricter regulations argue that minorities, the elderly, and the poor are most affected.
- 2) The Eliminating Fraud Hypothesis: If there is indeed substantial fraud and that the regulations eliminate it, the measured voter participation rate will decline. Votes that shouldn't have been recorded will now no longer be recorded and voter participation will decline.
- 3) The Ensuring Integrity Hypothesis: Greater confidence that the election is fair and that votes will be counted accurately encourages additional voter participation.<sup>11</sup> (Similarly, if the regulations reduce confidence, depending on the extent of the

<sup>10</sup> Tova Andrea Wang, “ID and Voting Rights,” The Century Foundation, August 29, 2005 (<http://www.tcf.org/list.asp?type=TN&pubid=1084>).

<sup>11</sup> Sherry Swirsky, co-chair of Philadelphia Mayor Ed Rendell's Election Reform Task Force, noted in 1993 that “[But] the obsessive concern with fraud is what depresses voter turnout and registration in Philadelphia. It contributes to this ultimately destructive view that ‘My vote doesn't matter, the whole system is corrupt.’ The *Inquirer* has done a grave disservice to democracy to this city. They have exaggerated the pervasiveness of fraud in elections.” Scott Farnelant, “Dead Men Can Vote: Voting Fraud is alive and well in Philadelphia,” Philadelphia City Paper, October 12-19, 2005 (<http://www.citypaper.net/articles/101295/article009.shtml>).

drop in participation suggested by the two previous hypotheses, this hypothesis of greater participation may be true even if overall voter participation declines.

Any or all of these effects may be occurring at the same time, and the difficult task is how to disentangle the possible effects that voting regulations can have. Both the Discouraging Voter and Eliminating Fraud hypotheses predict that to the extent that voting regulations have any effect, they will reduce the voter participation rate. While the Ensuring Integrity hypothesis may exist even if voter participation declines after the regulations are enacted, it is the only hypothesis that can explain increased voter participation.

Obviously, the simplest test is whether different voting regulations alter voter participation rates. However, as just noted, this test can only disentangle the hypotheses if voter participation increases.

There are two other possible ways of analyzing the data. The first is whether there are systematic differences in who is affected by the voting regulations. Even if the total voting participation rate does not show a statistically significant change, it is possible that certain groups -- such as minorities, the elderly or the poor -- face declines in participation rates and whether such declines occur systematically. In other words, do African-Americans face reductions in voter participation or is it particular random segments of African-Americans that appear to be more related to randomness than to any type of systematic discrimination.

The second and more powerful test is to examine what happens to voter participation rates in those geographic areas where voter fraud is claimed to be occurring. If the laws have a much bigger impact in areas where fraud is said to be occurring, that would provide evidence for the Eliminating Fraud and/or Ensuring Integrity hypotheses. The point would be that the laws per se were not discouraging African-Americans or the elderly or the poor from participating, but that the change in participation in high fraud areas would indicate that any drop was primarily due to eliminating fraudulent votes rather than the general impact of the voting rules on certain types of citizens.

Over the 1996 to 2006 period studied here, there are a range of different regulations that can affect the cost of voting: photo IDs, non-photo IDs, same day registration, registration by mail, pre-election day in poll voting, absentee ballot obtained without requiring an excuse, whether there is a closed primary, provisional ballots, and voting by mail.<sup>12</sup> The existing ID requirements, while not as strict as the mandatory photo IDs recently enacted by Georgia, Indiana and Missouri, may still make it more difficult for some people to vote.

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<sup>12</sup> Motor Voter was already adopted nationally prior to the 1996 general election. The timing for these laws were primarily obtained from the Republican National Committee's "Summary of State Voting Laws and Procedures" from November 1996 to July 2006. Electionline.org's Election Reform: What's Changed, What Hasn't and Why 2000-2006 (February 2006). Information on in-person absentee voting was obtained from a Nexis/Lexis search.

Other reforms, such as same day voter registration, absentee ballots without an excuse, and voting by mail, make it easier for people to vote and should increase voter participation rates, but they may also make fraud easier. Same day voter registration makes it more difficult to accurately determine whether people are who they claim to be. Both Democrats and Republicans agree that the problems of vote fraud involve absentee ballots and vote by mail are due to the difficulties in monitoring who ordered them and filled them out.<sup>13</sup> Election results have been overturned as a result of this type of fraud.<sup>14</sup> The New York Times has editorialized that "If the Legislature really wanted to deter fraud, it would have focused its efforts on absentee ballots, which are a notorious source of election fraud . . . ."<sup>15</sup>

Likewise, provisional ballots also make voting easier: in theory, they allow voters, who have been the victim of some type of bureaucratic error (where their registration information has been misplaced) to be allowed to vote. Yet, there is the potential for fraud, where provisional ballots are issued to people outside of where they are registered and possibly voting in many different precincts. Some, such as John Fund (2004), claims, "We might have a Florida-style dispute spilling into the courts in several states where the presidential race is close, with one side calling for all provisional ballots to be tabulated ('Count Every Vote') and the other demanding that the law be scrupulously observed."

Again, just as with IDs, all these other rules could either increase or decrease voter participation. For example, lax absentee ballot rules can make it easier for some people to vote, but they can also increase fraud and thus discourage others from participating.

Other factors that determine voter participation rates include the closeness of races, the presence of initiatives and major races on the ballot, and income and demographic characteristics (e.g., Cox and Munger, 1989; Matsusaka, 1992 and 1993; and Gerber and Green, 2002).<sup>16</sup> The closer the races and thus the greater the interest in races, the more

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<sup>13</sup> Signatures are required on these mail-in ballots, but as the bi-partisan National Commission on Election Reform noted "But in fact, for practical reasons, most states do not routinely check signatures either on applications or on returned ballots, just as most states do not verify signatures or require proof of identity at the polls."

<sup>14</sup> "In 1993, a federal judge had to overturn a special state Senate election in which Democratic precinct workers had gone door to door with absentee ballot forms and "helped" voters fill them out." John Fund, "The Voter Integrity Project: How to stop fraud and suppression? Ashcroft showed the way in 2002." *Tuesday, September 30, 2003* (<http://www.opinionjournal.com/diary/?id=110004084>).

<sup>15</sup> Editorial, "Voter Suppression in Missouri," *New York Times*, August 10, 2006.

<sup>16</sup> This paper uses Matsusaka's distinction between initiatives and legislative measures. While I only have data on the initiatives on the ballot, presumably legislative measures matter also, though Matsusaka (1992) finds that initiatives are much more important in explaining voter turnout than are legislative measures. Matsusaka states that an "initiative" is a proposed law or constitutional amendment that has been put on the ballot by citizen petition. By contrast, a "legislative measure" or "legislative referendum" or "legislative proposition" is a proposed law or constitutional amendment that has been put on the ballot by the legislature.

The only variable that I did not follow Cox and Munger specification and use was campaign spending. In part I did this because they were examining turnout for only congressional races in a non-presidential election year. It is not clear how one would distribute presidential campaign spending across counties, especially since presidential campaigns target their expenditures. Given that I am using county level

likely people will be to participate. For the general election data, data has been collected on the absolute percentage point differential between the top two finishers of that state's presidential race as well as for any gubernatorial or U.S. senatorial races. The Initiative and Referendum Institute's Initiatives Database is used to identify the number and types of initiatives that have appeared on general and primary election ballots from 1996 through 2004. Twenty-five different types of initiatives are identified ranging from those on abortion to Veteran Affairs.<sup>17</sup>

## The Evidence

The data here constitute county level data for general and primary elections. The general election data goes from 1996 to 2004. For the primary election, the data go from 1996 to July 2006 for the Republican and Democratic primaries. However, the data do not go back to 1996 for all states since I relied for the primary data on data supplied by state Secretary of States. Because of this limit on primary data, most of the estimates here will focus on the general election data.

How did these laws impacted voter participation rates? As a first crude measure, I only considered states that had changed their laws over time to compare how the participation rates changed when the laws changed. Obviously this simple comparison ignores that many other factors are changing, but it at least compares only the same states over time. The simple mean voter participation rates, with and without photo IDs, indicate that adopting photo IDs produced a drop in voter participation of 1.5 percentage points, a statistically insignificant change. On the other hand, a similar breakdown for non-photo IDs, absentee ballots with no excuses, provisional ballots, pre-election day in-poll voting, same day registration, registration by mail, and voting by mail all show statistically significant increases in voter participation rates. These other changes are much larger and indicate an increase of at least 4 percentage points. For registration by mail, an increase of 11.5 percentage points. (The raw means for all the data are shown in the

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turnout data, similar concerns exist for gubernatorial and senate campaign expenditures. I hope that the margin of victory that I am using for presidential, gubernatorial, and US Senate campaigns as well as county fixed effects will pick up much of what these expenditures would measure. This is partly true if only because the level of expenditures is related to the margin of victory.

<sup>17</sup> The source of the information related to the Voting Age Population and general elections is the master election files of Polidata ([www.polidata.org](http://www.polidata.org)). Polidata compiles election-related information from state and local election officials around the country, year-by-year, on an ongoing basis, but only for general elections. This information includes registration and turnout statistics when available and election results by party by office, by state and county. In cases in which the election officials do not collect, compile or report the actual number of voters who requested ballots, the turnout is determined by the partisan race in the state that generated the highest number of votes. In a handful of cases this turnout may be the result of non-statewide races, such as those for the U.S. House or the State Legislature. There are several projections and estimates for the Voting Age Population, some released before an election and some released long after the election year. The Voting Age Population numbers used here are estimates based upon methodology developed by Polidata reflecting annual state-level estimates of the population released by the Bureau of the Census.

County level data on per capita income were obtained from the Regional Economic Information System (REIS). Nominal values were converted to real values by using the consumer price index. State level unemployment rates were obtained from the Bureau of Labor Statistics. Poverty rate data was obtained from U.S. Department of Commerce.

appendix.)

Table 2 provides the first regression estimates. They are constructed to account for all the different types of voting regulations mentioned earlier; the closeness of presidential, gubernatorial, and U.S. Senate races; geographic and demographic differences; the number and types of voter initiatives; as well as national changes over time in voter participation rates. Six specifications are reported: three each examining the voter participation rate and the natural log of the voter participation rate. While all the estimates account for geographic and year fixed effects, the estimates report different combination of the other control variables. Specifications (1) and (4) examine only the ID requirements as well as the margin of victory for the presidential, gubernatorial, and U.S. Senate races. Specifications (2) and (5) include all the other variables except for information on the topics of individual initiatives. Finally, because of Matsusaka's (1992) evidence -- that the impact of initiatives on voter turnout vary dramatically with the issues that the initiative deals with -- specifications (3) and (6) include all dummy variables indicating the type of initiative being voted on. The regressions were run using ordinary least squares with clustering of counties by state and robust standard errors.

The results indicate only minimal support for the notion that IDs -- whether photo IDs with substitution or non-photo IDs -- reduce voting participation rates. Indeed, most of voting regulations, in the vast majority of estimates, seem to have no statistically significant effects. In only one of the six specifications does requiring non-photo IDs imply a statistically significant effect. In that one case, specification (4) with the most minimal use of control variables, non-photo IDs are associated with a 3.9 percent reduction in voting rates. Accounting for all the other factors in specification (6) drives this estimate down to about 2.2 percent.

Of the other laws, only one, pre-election day voting, is consistently and significantly related to voting rates is, and it implies about a 1.5 to 1.8 percentage point reduction in voting participation from the law. This result is consistent with the Ensuring Integrity Hypothesis. The Discouraging Voter or Eliminating Fraud Hypotheses would imply that pre-election day voting should increase voting participation rates, either because the cost of voting has been reduced or because there is more fraud. The Ensuring Integrity Hypothesis can explain the drop in voting rates because increased fraud discourages others voting. Only one of the laws implies a statistically significant impact and that is only for one specification. In that one specification same day registration implies a 2.4 percentage point increase in voting rates, and that result is consistent with all three hypotheses.

As to the other results, presidential election margins are most important of any of the races in explaining voter turnouts and that holds for all races. Among the initiatives, topics on abortion, animal rights, campaign finance, education, labor reform, and taxes get voters the most excited. By contrast, initiatives on business regulations almost put people to sleep, reducing voter participation by 12 percentage points. Hispanics vote at about a half of a percentage point lower rate than whites.

A few other specifications were also tried. For example, I included state specific time trends and squared values for the winning margins in presidential, gubernatorial, and senate races.<sup>18</sup> The results showed little change from those already presented.

In addition, I also tried using data that I had available up until 2002 on most campaign finance regulations. Proponents of campaign finance regulations worry that the perception of corruption created by campaign donation discourage people from voting.<sup>19</sup> If so, campaign finance regulations should increase voter participation rates. Yet, the results imply that the regulations reduce voter turnout and their inclusion does not change the estimated effects of voting regulations on voter participation shown in specifications (3) and (6) (see Table 3).<sup>20</sup> Limits on corporate donations to gubernatorial campaigns, political action committees, or political parties as well as limits on total gubernatorial campaign expenditures all reduce voter participation rates. Limits on these types of campaign expenditures by individuals are very highly correlated with the limits on corporations and unions and drop out of the specifications. Only limits on union donations to political parties are associated with high voter participation rates. Given previous work that campaign finance regulations lower the rate that incumbents are defeated, increase their win margins, and decrease the number of candidates running for office (Lott, 2006), it is not particularly surprising that these regulations also discourage people from voting.<sup>21</sup>

Tables 4 and 5 attempt to see whether the different voter regulations have a differential impact across African-Americans, Hispanics and whites. Table 4 shows the coefficient estimates for percentage of the voting age population represented by each of the races interacted with the various voting regulations. Table 5 examines whether the coefficients for any particular regulation are statistically different between the different races. With two exceptions, it is very difficult to see any differential impact across these racial groups. Voting by mail increases African-Americans' voting rates relative to whites and lowers Hispanics' voting rates relative to whites. Absentee ballots also increase the voting rate of African-Americans relative to Hispanics. But none of the other voting regulations impacts these different races differently.

Table 6 tries a similar breakdown by voter age and again it is difficult to see many significant differences between different age groups. The F-tests shown in the last

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<sup>18</sup> See for example Cox and Munger (1989) for analogous specifications involving squared winning margins. I did also try including total county population (given that county size remains constant this will measure density as done by Cox and Munger) as well as the state poverty rate, but including these variables in specifications 3 and 6 did not cause any of the voting regulations to change from being significant to not significant nor cause the reverse to happen. The state level poverty rate will again be discussed later.

<sup>19</sup> Allan Cigler (2004) notes that "But the breakdown of the existing system of campaign finance regulation started to attract the attention of a number of additional interests, particularly foundations and think tanks disturbed by voter cynicism and concerned with the lack of voter participation in elections and the erosion of civic responsibility generally. Enhancing democracy through the lessening of the impact of money in politics was typically the goal of these organizations."

<sup>20</sup> See Lott (2006) for a detailed discussion of this data. Using these variables reduces the sample size by 23 percent so they are included separately and were not included in the regressions reported in Table 2.

<sup>21</sup> Matsusaka (1993), Matsusaka and Palda (1993), and Cox and Munger (1989) have recognized that the impact of campaign finance laws on how competitive races are could either increase or decrease turnout.



column compare age groups from 20 to 29, 30 to 39, 40 to 49, and 50 to 64 year olds with the estimates for 65 to 99 year olds. In all these estimates only the differences between 50 to 64 year olds and 65 to 99 year olds are significantly different from each other and that is true for non-photo IDs, absentee ballots without an excuse, provisional ballots, and pre-election day in-poll voting or in-person absentee voting regulations. But all these results are much more a result of 50 to 64 year olds being different from any of the other age groups than it is that 65 to 99 year olds. There is no evidence that any of these rules impact those over 65 years of age relative to voters from 20 to 50 years of age.

Figures 1 and 2 are a result of a regression that breaks down the estimates by both race, age and gender. The regression that generated these figures corresponded to specification (3) in Table 2 that interacts those factors with just photo ID requirements. Again it is hard to see these regulations as differentially harming either the elderly, African-Americans, Hispanics, or women. In Figure 1, the one stand-out estimate is African-American females 50 to 64 years of age, a group that shows a big drop in their share of the voting age population from photo IDs. But this contrasts sharply with African-American females who are 40 to 49 and 65 to 99 years of age. It does not appear that there is anything systematic about being either African-American, female or elderly that causes one to be adversely impacted by photo IDs. The estimates in Figure 2 similarly show a random pattern by race and age. Interestingly in this case it is white males between 65 and 99 who appear to be most adversely affected by photo IDs.

To test whether poor people are impacted differently from others by these different voting regulations, I tried interacting the voting regulations shown in specification (3) from Table 2 first by county income and then separately by state level poverty rates. In none of these cases were these coefficients statistically significant and implies that none of the regulations neither adversely affected nor improved poor people's voter participation rates.

Table 7 provides interesting results. The American Center for Voting Rights provides what appears to be the only comprehensive national list of voter fraud "hot spots." Their 2005 report lists six major "hot spots": Cuyahoga County, Ohio; St. Clair County, Illinois; St. Louis County, Missouri; Philadelphia, Pennsylvania; King County, Washington; and Milwaukee County, Wisconsin. Again I started with specification (3) in Table 2 but added in variables that interacted the voting regulations with a dummy variable equaling 1 for these six counties. Table 6 reports just the coefficients from this regression for these interactions and the voting regulations by themselves.

As shown earlier, ID requirements have no significant impact on voting participation rates when all the counties for which they are imposed are examined. However, most telling, non-photo IDs increased voting participation in the "hot spots," supporting the Ensuring Integrity hypothesis. Neither of the other theories can explain why requiring IDs increase voter participation. The same also holds true for increasing the length of the registration deadline: It, too, increases voter turnout despite making voting more difficult. The results for pre-election day in-poll voting also imply that vote fraud is occurring. In general, pre-election day in-poll voting is associated with reduced turnout,

consistent with the Ensuring Integrity hypothesis. The fact that turnout increases in the fraud “hot spots” when pre-election day in-polling is allowed implies that the “hot spots” are exploiting this rule for vote fraud.

Finally, Table 8 provides some simple estimates for U.S. Senate primaries by party.<sup>22</sup> The sample here was only a third of the size of the general election estimates. Overall, Democratic primary turnout rates seem to be much more affected by voting regulations than do Republican ones. However, the only results that are related to fraud involve provisional ballots. Both specifications for the Democratic primary produce coefficients that imply the Ensuring Integrity Hypothesis: despite the lower cost of voting from provisional ballots, there is a statistically significant 4.4 percentage point drop in the voting rate. For Republicans the coefficients are of the opposite sign and statistically significant. Thus, the results do not allow us to disentangle the alternative hypotheses.

### **Conclusion**

There is some evidence of vote fraud. Regulations meant to prevent fraud can actually increase the voter participation rate. It is hard to see any evidence that voting regulations differentially harm either minorities, the elderly, or the poor. While this study examines a broad range of voting regulations, it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections. What can be said is that the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted.

One particularly valuable finding is that voting regulations have a different impact on turnout in counties where fraud is alleged to be rampant. These results indicate that while these voting regulations have little impact on turnout generally, certain regulations do significantly impact turnout in these so-called “hot spots.”

Contrary to the claims that campaign finance regulations will encourage voter participation by reducing the perception of political corruption, campaign finance regulations reduced voter participation rates.

Following other recent work showing that campaign finance regulations entrench incumbents, reduce the number of candidates running for office, and increase win margins (all factors associated with less exciting campaigns), these results find that campaign finance regulations usually reduce voter turnout.

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<sup>22</sup> The county level on votes by U.S. Senate race was obtained by going online at the different Secretary of State websites (<http://www.nass.org/sos/sosflags.html>). Some states only had this data available back to 2000 and others did not have the data available by race at the county level.

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Table 1: Comparing the Average Voter Turnout Rate for States that have When Their Voting Regulations are and are Not in Effect: Examining General Elections from 1996 to 2004

	Average Voter Turnout Rate During Those Elections that the Regulation is not in Effect	Average Voter Turnout Rate During Those Elections that the Regulation is in Effect	Absolute t-test statistic for whether these Averages are Different from Each Other
Photo ID (Substitutes allowed)	55.31%	53.79%	1.6154
Non-photo ID	51.85%	54.77%	7.5818***
Non-photo ID (Assuming that Photo ID rules are not in effect during the years that Non-photo IDs are not in Effect)	51.92%	54.77%	7.0487***
Absentee Ballot with No Excuse	50.17%	54.53%	10.5333***
Provisional Ballot	49.08%	53.65%	12.9118***
Pre-election day in poll voting/in-person absentee voting	50.14%	47.89%	3.8565***
Same day registration	51.07%	59.89%	7.3496****
Registration by mail	50.74%	62.11%	13.8353***
Vote by Mail	55.21%	61.32%	3.7454***

\*\*\* F-statistic statistically significant at the 1 percent level.

\*\* F-statistic statistically significant at the 5 percent level.

\* F-statistic statistically significant at the 10 percent level.

Table 2: Explaining the Percent of the Voting Age Population that Voted in General Elections from 1996 to 2004 (The various control variables are listed below, though the results for the county and year fixed effects are not reported. Ordinary least squares was used Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

Control Variables	Endogenous Variables					
	Voting Rate			Ln(Voting Rate)		
	(1)	(2)	(3)	(4)	(5)	(6)
Photo ID (Substitutes allowed)	-0.012 (0.6)	-0.0009 (0.1)	0.0020 (0.2)	-0.0407 (0.9)	-0.0195 (0.5)	-0.0164 (0.4)
Non-photo ID	-0.011(1.50)	-0.010 (1.3)	-0.0050 (0.6)	-0.039 (2.0)	-0.034 (1.62)	-0.0215 (1.0)
Absentee Ballot with No Excuse		0.0015 (0.2)	-0.0002 (0.0)		0.0063 (0.4)	-0.0003 (0.0)
Provisional Ballot		0.0081 (1.4)	0.0076 (1.2)		0.0139 (0.9)	0.0120 (0.7)
Pre-election day in poll voting/in-person absentee voting		-0.0183 (2.4)	-0.0145 (1.7)		-0.0520 (2.8)	-0.0453 (2.2)
Closed Primary		-0.005 (0.8)	-0.0036 (0.5)		-0.0037 (0.2)	0.0047 (0.2)
Vote by mail		0.0167 (1.7)	-0.0145 (0.4)		0.0107 (0.4)	-0.0803 (0.9)
Same day registration		0.0244 (2.0)	0.0221 (1.6)		-0.0004 (0.0)	-0.0093 (0.2)
Registration by mail		-0.002 (0.1)	0.0122 (0.5)		-0.0333 (1.2)	0.0143 (0.3)
Registration Deadline in Days		-0.0003 (0.3)	-0.0005 (0.5)		-0.0006 (0.3)	-0.0013 (0.5)
Number of Initiatives		0.0002 (0.1)	-0.0054 (1.7)		-0.0022 (0.5)	-0.0195 (2.0)
Real Per Capita Income		-8.60E-07 (0.4)	-9.84E-09 (0.0)		-5.30E-06 (1.3)	-3.68E-06 (1.1)
State unemployment rate		-0.0010 (0.2)	0.0003 (0.1)		-0.0067 (0.6)	0.0000 (0.0)
Margin in Presidential Race in State	-0.0011 (2.2)	-0.0010 (2.1)	-0.001 (1.8)	-0.0022 (1.6)	-0.0020 (1.6)	-0.0023 (1.5)
Margin in Gubernatorial Race	-0.0005 (1.6)	-0.0004 (1.3)	-0.0005 (1.7)	-0.0012 (1.2)	-0.0012 (1.3)	-0.0015 (1.4)
Margin in Senate Race	-0.0001(1.0)	-0.0001(0.8)	-0.0001 (0.7)	-0.0001(0.3)	-0.0001 (0.2)	-0.0001 (0.3)
Initiatives by Subject						
Abortion			0.0552 (1.7)			0.1702 (2.3)
Administration of Gov			0.0090 (0.5)			0.0433 (0.9)
Alien Rights			-0.0088 (0.5)			0.0269 (0.7)
Animal Rights			0.0295 (2.6)			0.0922 (3.0)
Bonds			-0.0039 (0.1)			0.0283 (0.3)
Business Regulations			-0.1202 (3.3)			-0.2925 (3.1)
Campaign Finance			0.0205 (1.7)			0.0559 (1.7)
Civil Rights			-0.0031 (0.2)			-0.0120 (0.4)
Death Penalty			(dropped)			(dropped)
Drug policy			0.0082 (0.3)			0.0258 (0.6)
Education			0.0244 (2.0)			0.0589 (1.8)
Election Reform			0.0234 (1.9)			0.0523 (1.3)
Environmental			0.0090 (0.9)			0.0315 (1.3)
Gaming			-0.0045 (0.3)			0.0030 (0.1)
Gun regulation			-0.0465 (1.6)			-0.0970 (1.2)
Health/medical			-0.0035 (0.3)			0.0250 (0.7)
Housing			(dropped)			(dropped)
Initiatives and Referendum Reform			-0.0018 (0.1)			-0.0142 (0.4)
Labor Reform			0.1890 (2.6)			0.4700 (2.6)

Legal Reform			0.0094 (0.5)			0.0502 (0.9)
Taxes			0.0649 (2.2)			0.1233 (1.8)
Term Limits			0.0475 (1.5)			0.0563 (0.6)
Tort Reform			0.0339 (1.6)			0.1570 (2.5)
Utility Regulations			0.0115 (0.6)			0.0287 (0.6)
Veterans Affairs			0.0072 (0.7)			0.0189 (0.8)
% population 10 to 19		0.3865 (1.6)	0.1826 (2.3)		1.0608 (1.9)	0.4018 (2.0)
% population 20 to 29		-0.0745 (0.4)	-0.1375 (1.7)		-0.4571 (1.0)	-0.3354 (1.6)
% population 30 to 39		-0.2022 (0.6)	-0.0409 (1.5)		-0.3992 (0.6)	-0.0836 (1.3)
% population 40 to 49		0.2875 (0.8)	-0.0098 (0.5)		0.9769 (1.4)	-0.0149 (0.3)
% population 50 to 64		0.2997 (1.3)	0.5242 (2.5)		0.2354 (0.5)	0.7475 (1.6)
% population 65 to 99		0.1799 (0.8)	0.3475 (1.4)		0.4590 (1.1)	0.7881 (1.7)
% population Black		-0.0057 (1.9)	-0.0033 (1.1)		-0.0166 (2.2)	-0.0117 (1.5)
% population White		-0.0027 (1.1)	-0.0006 (0.2)		-0.0108 (1.7)	-0.0065 (1.0)
% population Hispanic		-0.0081 (5.4)	-0.0075 (5.4)		-0.0189 (6.1)	-0.0185 (6.0)
% population male		-0.2717 (1.2)	-0.3864 (1.7)		-0.5616 (1.2)	-0.7971 (1.8)
Adj R-squared	.8719	.8828	.8890	0.7958	0.8118	0.8189
F-statistic	117.45	260.55	13852387	75.89	164.02	7429623.34
Number of Observations	16028	14962	14962	16028	14962	14962
Fixed County and Year Effects	Yes	Yes	Yes	Yes	Yes	Yes

Table 3: Including information on Campaign Finance Regulations Over General Elections from 1996 to 2002 (The regressions follow specifications (3) and (6) in Table 2 with the inclusion of the various campaign finance regulations reported below. All the variables reported below are dummy variables for whether the laws are in effect. A detailed discussion of these laws is provided in Lott (2006). The other coefficients shown in specifications (3) and (6) are not reported. Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

	Voting Rate		Ln(Voting Rate)	
	Coefficient	Absolute t-statistic	Coefficient	Absolute t-statistic
Photo ID (Substitutes allowed)	0.0170	0.41	0.0414	0.35
Non-photo ID	-0.0028	0.2	-0.0012	0.03
Absentee Ballot with No Excuse	-0.0002	0.02	0.0107	0.51
Provisional Ballot	0.0084	0.99	0.0124	0.56
Pre-election day in poll voting/in-person absentee voting	-0.0112	0.95	-0.0460	1.7
Closed Primary	-0.0051	0.42	-0.0039	0.12
Vote by mail	-0.0510	0.78	-0.0641	0.35
Same day registration	0.0837	3.17	0.1539	2.04
Registration by mail	(dropped)		(dropped)	
Registration Deadline in Days	-0.0004	0.2	-0.0024	0.34
Limits on Individual Donations to Gubernatorial Races	0.0168	0.86	0.0443	0.81
Limits on Corporate Donations to Gubernatorial Races	-0.0409	2.96	-0.0778	2.23
Limits on Union Donations to Gubernatorial Races	-0.0191	1.84	-0.0396	1.48
Limits on Individual Political Action Committee Donations to Gubernatorial Races	(dropped)		(dropped)	
Limits on Corporate Political Action Committee Donations to Gubernatorial Races	-0.0611	2.48	-0.1398	2.14
Limits on Union Political Action Committee Donations to Gubernatorial Races	(dropped)		(dropped)	
Limits on Individual Donations to Political Parties	(dropped)		(dropped)	
Limits on Corporate Donations to Political Parties	-0.0220	0.98	-0.1560	2.25
Limits on Union Donations to Political Parties	0.0558	4.56	0.1971	5.61
Campaign Expenditure Limits on Gubernatorial Races	-0.0786	2.76	-0.1987	2.35
Adj R-squared	0.8803		0.8064	
F-statistic	180253.79		8040.31	
Number of Observations	11630		11630	
Fixed County and Year Effects	Yes		Yes	



Table 4: Do the voting regulations impact different racial groups differently: Interacting racial composition of the electorate with the different voting regulations using the specification in Table 2, column 1 (Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)

	Coefficient	t-statistics
Percent of the Voting Age Population that is African-American times the following regulations		
Photo ID (Substitutes allowed)	0.0010	1.22
Non-photo ID	-0.0002	0.93
Absentee Ballot with No Excuse	0.0009	1.74
Provisional Ballot	0.0009	1.46
Pre-election day in poll voting/in-person absentee voting	-0.0008	1.16
Closed Primary	0.0001	0.21
Vote by mail	0.0077	5
Same day registration	0.0024	1.74
Registration by mail	-0.0003	0.24
Registration Deadline in Days	-0.0001	0.99
Percent of the Voting Age Population that is Hispanic times the following regulations		
Photo ID (Substitutes allowed)	-0.0014	0.99
Non-photo ID	0.0007	0.63
Absentee Ballot with No Excuse	-0.0015	1.3
Provisional Ballot	0.0000	0.04
Pre-election day in poll voting	0.0003	0.29
Closed Primary	0.0001	0.14
Vote by mail	-0.0020	2.56
Same day registration	-0.0034	1.35
Registration by mail	0.0001	0.87
Registration Deadline in Days	-0.0097	1.43
Percent of the Voting Age Population that is White times the following regulations		
Photo ID (Substitutes allowed)	0.0000	0.2
Non-photo ID	-0.0001	0.43
Absentee Ballot with No Excuse	0.0000	0.02
Provisional Ballot	0.0000	0.08
Pre-election day in poll voting	-0.0001	0.83
Closed Primary	-0.0001	1.3
Vote by mail	0.0011	2.3
Same day registration	0.0003	1.54
Registration by mail	0.0005	1.59
Registration Deadline in Days	0.0000	0.09

**Table 5: Comparing the Differential Impact of the Shares of the Population that are Black, Hispanic and White and Voting Regulations: Interacting the Population Shares of Different Racial Groups and Voting Regulations (absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)**

	Differences between interacting the percent of the voting age population that is African-American and separately the percent of the voting age population that is white with the different voting regulations		Differences between interacting the percent of the voting age population that is Hispanic and separately the percent of the voting age population that is white with the different voting regulations		Differences between interacting the percent of the voting age population that is African-American and separately the percent of the voting age population that is Hispanic with the different voting regulations	
	Coefficient for African-Americans – the coefficient for whites	F-statistic for difference in coefficients for African-Americans and whites	Coefficient for Hispanics – the coefficient for whites	F-statistic for difference in coefficients for Hispanics and whites	Coefficient for African-Americans – the coefficient for Hispanics	F-statistic for difference in coefficients for African-Americans and Hispanics
Photo ID (Substitutes allowed)	0.0010	1.47	-0.0014	0.77	0.0024	2.25
Non-photo IDs	-0.0002	0.51	0.0007	0.43	-0.0009	0.63
Absentee Ballot with No Excuse	0.0009	2.48	-0.0015	1.51	0.0023	3.73*
Provisional Ballot	0.0009	1.91	0.00005741	0	0.0009	0.38
Pre-election day in poll voting/in-person absentee voting	-0.0007	1.03	0.0003	0.14	-0.0010	0.76
Closed Primary	0.0002	0.28	0.0003	0.08	-0.0001	0
Vote by mail	0.0066	20.75***	-0.0031	12.17***	0.0098	34.06***
Same day registration	0.0021	2.41	-0.0037	2.06	0.0059	2.77
Registration by mail	-0.0008	0.43	-0.0004	2.16	-0.0004	1.91
Registration Deadline in Days	-0.00006	0.9	-0.0097	0.74	0.0097	1.54

\*\*\* F-statistic statistically significant at the 1 percent level.

\*\* F-statistic statistically significant at the 5 percent level.

\* F-statistic statistically significant at the 10 percent level.

**Table 6: Comparing the Differential Impact of the Shares of the Population by Age and Voting Regulations: Interacting the Population Shares of Different Racial Groups and Voting Regulations (absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)**

Type of Voting Regulation	Percent of the Population	Coefficient	Absolute t-statistic	F-test comparing the coefficient for the 65 to 99 year old group with the other age groups
Photo ID (Substitutes allowed)	20 to 29 Years of Age	-0.162	0.79	0.37
	30 to 39 Years of Age	0.417	0.81	0.78
	40 to 49 Years of Age	0.123	0.23	0.08
	50 to 64 Years of Age	-0.189	0.51	0.08
	65 to 99 of Age	-0.032	0.15	
Non-photo ID Required	20 to 29 Years of Age	-0.074	0.46	0.26
	30 to 39 Years of Age	-0.334	1.21	1.35
	40 to 49 Years of Age	0.987	1.53	2.13
	50 to 64 Years of Age	-0.672	1.88	2.86*
	65 to 99 of Age	0.015	0.12	
Absentee Ballot with No Excuse	20 to 29 Years of Age	0.112	0.86	2.27
	30 to 39 Years of Age	-0.011	0.04	1.22
	40 to 49 Years of Age	0.211	0.5	0.17
	50 to 64 Years of Age	-0.631	1.86	5.07**
	65 to 99 of Age	0.377	2.6	
Provisional Ballot	20 to 29 Years of Age	0.105	0.85	2.50
	30 to 39 Years of Age	0.162	0.42	2.69
	40 to 49 Years of Age	-0.639	1.55	0.44
	50 to 64 Years of Age	0.657	2.11	4.28**
	65 to 99 of Age	-0.314	1.69	
Pre-election day in-poll voting	20 to 29 Years of Age	-0.007	0.08	1.99
	30 to 39 Years of Age	-0.318	0.83	0.00
	40 to 49 Years of Age	-0.130	0.28	0.13
	50 to 64 Years of Age	0.625	1.95	4.54**
	65 to 99 of Age	-0.324	1.89	
Closed Primary	20 to 29 Years of Age	-0.148	0.66	0.20
	30 to 39 Years of Age	-0.049	0.09	0.15
	40 to 49 Years of Age	0.453	0.95	1.62
	50 to 64 Years of Age	(dropped)		
	65 to 99 of Age	-0.258	1.51	
Vote by mail	20 to 29 Years of Age	-0.069	0.21	0.34
	30 to 39 Years of Age	0.057	0.12	0.28
	40 to 49 Years of Age	0.879	1.24	0.31
	50 to 64 Years of Age	-0.682	0.74	0.47
	65 to 99 of Age	0.417	0.56	
Same day registration	20 to 29 Years of Age	-0.083	0.16	1.16
	30 to 39 Years of Age	-1.086	1.66	2.70
	40 to 49 Years of Age	0.254	0.34	0.49
	50 to 64 Years of Age	0.227	0.24	0.82
	65 to 99 of Age	1.188	1.31	
Registration by mail	20 to 29 Years of Age	-0.234	0.99	0.72
	30 to 39 Years of Age	0.266	0.49	0.04
	40 to 49 Years of Age	0.038	0.05	0.03
	50 to 64 Years of Age	-0.013	0.02	0.04
	65 to 99 of Age	0.157	0.51	

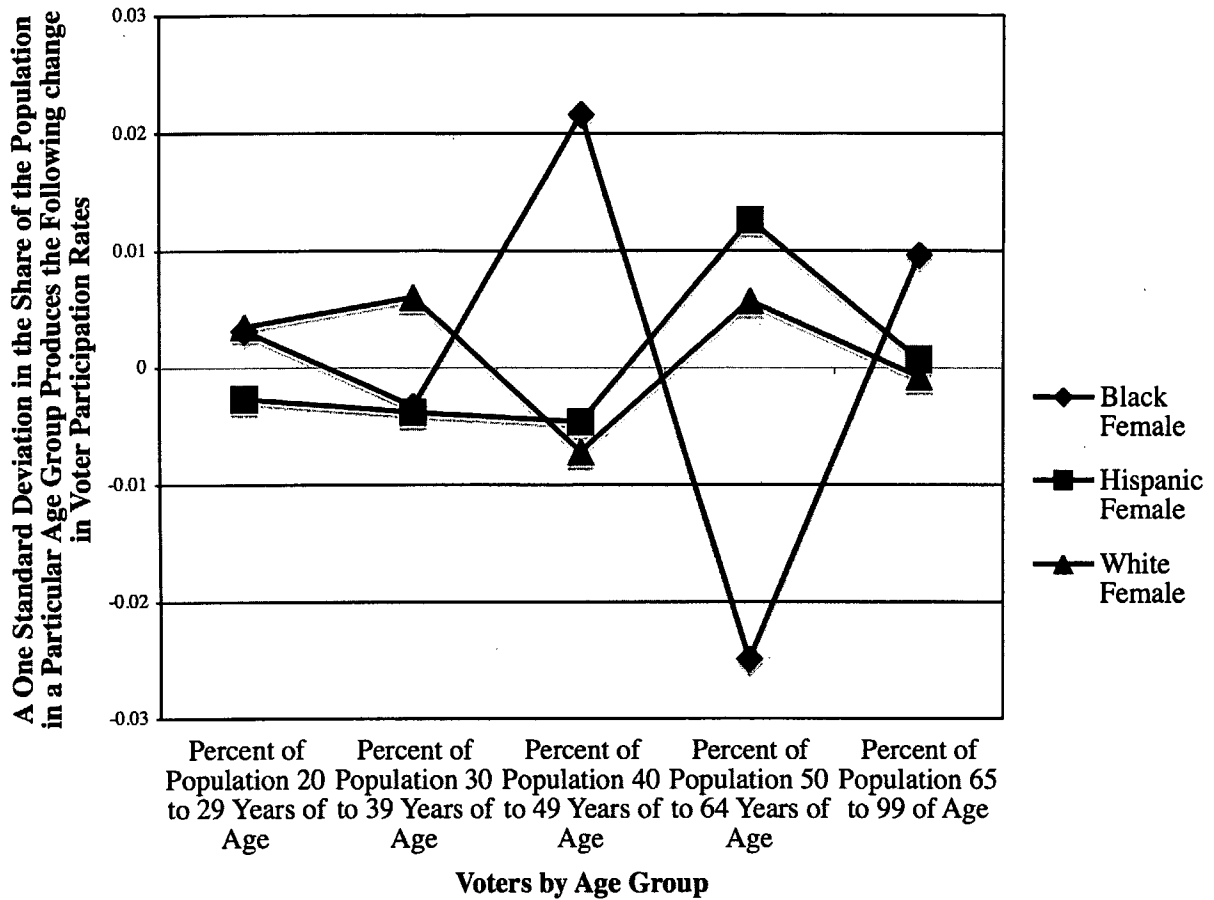
Registration Deadline in Days	20 to 29 Years of Age	0.002	0.16	0.00
	30 to 39 Years of Age	-0.002	0.14	0.06
	40 to 49 Years of Age	-0.007	0.32	0.16
	50 to 64 Years of Age	0.001	0.08	0.00
	65 to 99 of Age	0.002	0.16	

\*\*\* F-statistic statistically significant at the 1 percent level.

\*\* F-statistic statistically significant at the 5 percent level.

\* F-statistic statistically significant at the 10 percent level.

**Figure 1: The Change in Voting Participation Rates from the Adoption of Photo IDs by Race for Women**



**Figure 2: The Change in Voting Participation Rates from the Adoption of Photo IDs by Race for Men**

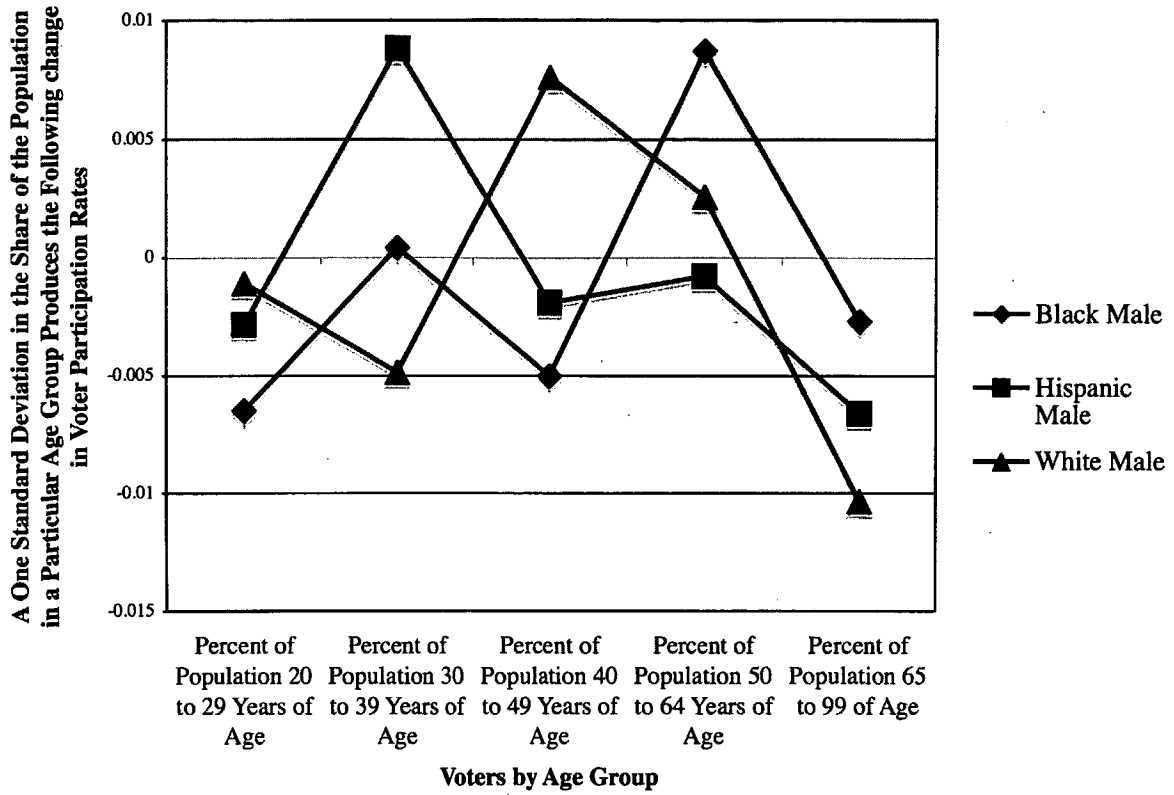


Table 7: Examining Whether the Six “Hot Spots” Counties Identified by the American Center for Voting Rights as Having the Most Fraud: Interacting the Voting Regulations that can affect fraud with the six “Hot Spots” Using Specification 3 in Table 2 as the base (The six “hot spots” are Cuyahoga County, Ohio; St. Clair County, Illinois; St. Louis County, Missouri; Philadelphia, Pennsylvania; King County, Washington; and Milwaukee County, Wisconsin. Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

Voting Regulations that can Effect Fraud	Impact of Voting Regulations in “Hot Spots”		Impact of Voting Regulations for All Counties	
	Coefficient	Absolute t-statistic	Coefficient	Absolute t-statistic
Photo ID (Substitutes allowed)	Dropped		0.002	0.17
Non-photo ID Required	0.031	1.95*	-0.005	0.61
Absentee Ballot with No Excuse	0.003	0.2	0.0002	0.03
Provisional Ballot	0.006	0.4	0.008	1.14
Pre-election day in poll voting/in-person absentee voting	0.033	2.26**	-0.014	1.73*
Closed Primary			-0.004	0.46
Vote by mail	Dropped		-0.014	0.39
Same day registration	-0.005	0.28	0.022	1.57
Registration by mail	Dropped		0.012	0.52
Registration Deadline in Days	0.022	2.03**	-0.001	0.54
Adj R-squared	0.8890			
F-statistic	120907.07			
Number of Observations	14962			
Fixed County and Year Effects	Yes			

\*\*\* F-statistic statistically significant at the 1 percent level.

\*\* F-statistic statistically significant at the 5 percent level.

\* F-statistic statistically significant at the 10 percent level.

Table 8: Estimating the Impact of Voting Regulations on Voter Turnout in US Senate Primaries from 1996 to July 15, 2006 (Using specifications 2 and 4 in Table 2. Absolute t-statistics are reported.)

	Vote Difference in Democratic Senate Primaries		Vote Difference in Republican Senate Primaries		ln(Vote Difference in Democratic Senate Primaries)		ln(Vote Difference in Republican Senate Primaries)	
	coefficient	t-statistic	coefficient	t-statistic	coefficient	t-statistic	coefficient	t-statistic
Photo ID (Substitutes allowed)	-0.007	0.13	-0.037	0.42	-0.125	0.37	0.639	0.71
Non-photo ID Required	-0.022	0.73	-0.038	1.6	-0.298	1.06	-0.638	2.22
Absentee Ballot with No Excuse	-0.027	1.59	-0.017	0.59	-0.330	1.89	-0.052	0.14
Provisional Ballot	-0.044	2.69	0.014	0.54	-0.265	1.78	0.467	1.87
Pre-election day in poll voting	0.000	0.01	-0.017	0.77	-0.139	0.65	-0.074	0.23
Closed Primary	-0.093	2.05	-0.013	0.51	-0.631	2.32	-0.213	0.72
Vote by mail	0.006	0.19	-0.009	0.23	0.274	1.49	0.137	0.34
Same day registration	(dropped)		(dropped)		(dropped)		(dropped)	
Registration by mail	-0.005	0.1	-0.102	3.33	0.157	0.57	-0.929	2.18
Registration Deadline in Days	0.001	0.61	0.003	0.72	0.013	0.91	-0.028	0.82
Adj R2	0.8070		0.8172		0.8357		0.8349	
F-statistics	550.84		542.38		155.62		1221.33	
Number of Observations	4807		4517		4803		4508	



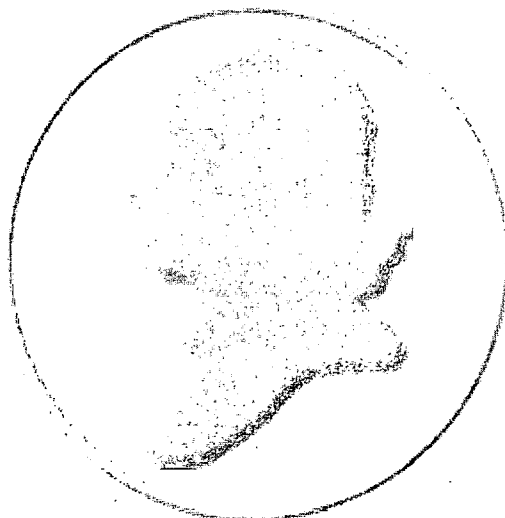
Data Appendix			
Variable	Number of Observations	Mean	Standard Deviation
Voter Turnout Rate	17428	0.5000424	0.1353909
Margin in Presidential Race in State	17428	6.461738	9.33715
Margin in Gubernatorial Race	17428	6.400746	11.24475
Margin in Senate Race	17428	12.88982	17.49234
Photo ID (Substitutes allowed)	16028	0.0505366	0.2190562
Non-photo ID	16028	0.4842151	0.4997664
Absentee Ballot with No Excuse	15782	0.3056647	0.460703
Provisional Ballot	15689	0.7011919	0.4577501
Pre-election day in poll voting/in-person absentee voting	17428	0.4666628	0.4989017
Closed Primary	15660	0.3690294	0.4825573
Vote by mail	16028	0.0067382	0.0818121
Same day registration	16028	0.0560893	0.2301014
Registration by mail	16028	0.9332418	0.2496105
Registration Deadline in Days	16028	24.0544	7.722113
Number of Initiatives	17428	0.9427932	2.186753
Real Per Capita Income	16937	13311	3453.604
State unemployment rate	17428	4.756009	1.139538
State poverty rate	17270	12.63536	3.50314
Types of Initiatives			
Abortion	17428	0.0093528	0.0962591
Administration of Gov	17428	0.0299518	0.1704593
Alien Rights	17428	0.0008607	0.0293256
Animal Rights	17428	0.0617397	0.2406891
Bonds	17428	0.003328	0.0575942
Business Regulations	17428	0.0063691	0.0795541
Campaign Finance	17428	0.0383291	0.1919951
Civil Rights	17428	0.0442392	0.2056319
Death Penalty	17428	0.003328	0.0575942
Drug policy	17428	0.0404521	0.1970228
Education	17428	0.0461327	0.2097784
Election Reform	17428	0.0262796	0.15997
Environmental	17428	0.0591577	0.2359263
Gaming	17428	0.0652972	0.2470567
Gun regulation	17428	0.0055658	0.0743982
Health/medical	17428	0.0527312	0.2235028
Initiatives and Referendum Reform	17428	0.0184186	0.1344635
Judicial Reform	17428	0.0020656	0.0454037
Labor Reform	17428	0.0379275	0.1910264
Legal Reform	17428	0.0245582	0.1547787
Taxes	17428	0.0743631	0.2623684
Term Limits	17428	0.0576658	0.2331171
Tort Reform	17428	0.0071724	0.084388
Transportation	17428	0.0038444	0.0618856
Utility Regulations	17428	0.007115	0.0840522
Veterans Affairs	17428	0.0030411	0.0550637
Demographics			
% population 10 to 19	17345	0.1489322	0.0197387
% population 20 to 29	17345	0.1213164	0.0341395
% population 30 to 39	17345	0.1388913	0.0212235
% population 40 to 49	17345	0.1492473	0.0173433

% population 50 to 64	17345	0.1597476	0.0253207
% population 65 to 99	17345	0.1471236	0.0407621
% population Black	17333	8.036701	12.63859
% population White	17333	78.76029	13.17825
% population Hispanic	17345	4.681539	9.453796
% population male	17345	0.4254129	0.0315461
Total population by county	58148	93918	29443
Campaign Finance Regulations			
Limits on Individual Donations to Gubernatorial Races	13545	0.5963824	0.4906406
Limits on Corporate Donations to Gubernatorial Races	13545	1.724695	1.251119
Limits on Union Donations to Gubernatorial Races	13545	1.301292	1.128532
Limits on Individual Political Action Committee Donations to Gubernatorial Races	13545	0.560945	0.4962901
Limits on Corporate Political Action Committee Donations to Gubernatorial Races	13545	0.5663344	0.4955985
Limits on Union Political Action Committee Donations to Gubernatorial Races	13545	0.5663344	0.4955985
Limits on Individual Donations to Political Parties	13902	0.2593871	0.4383141
Limits on Corporate Donations to Political Parties	13902	0.2376636	0.4256673
Limits on Union Donations to Political Parties	13902	0.2517623	0.434041
Campaign Expenditure Limits on Gubernatorial Races	13902	0.0845921	0.2782838

# **Increasing the Security of Elections: The Effect of Identification Requirements on Turnout of Minority Voters**

by

Hans A. von Spakovsky



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**Increasing the Security of Elections:**  
**The Effect of Identification Requirements on Turnout of Minority Voters**

by

Hans A. von Spakovsky

Voter fraud is a well-documented and existing problem in the United States.<sup>1</sup> While it is safe to say that many elections are conducted without voter fraud affecting the outcome or representing a significant factor in the race, there are sufficient cases of proven fraud and convictions by both state and federal prosecutors to warrant taking the steps necessary to improve the security and integrity of elections. There were many cases reported in the press in 2004 of thousands of fraudulent voter registration forms submitted to election officials in a dozen states across the country.<sup>2</sup> Obviously, when such fraudulent registrations are not caught by registration clerks, these registrations become a possible source of fraudulent votes as do frauds caused by impersonations of registered voters. For example, a New Mexico voter was not allowed to vote in 2004 because when he appeared at his polling place, he was told that someone else had already voted in his place.<sup>3</sup> In addition, someone could vote under the name of voters still on the rolls but who have moved or died. In 2000, a review by two news organizations of Georgia's voter registration rolls for the previous 20 years found 5,412 votes had been cast by deceased voters – some on multiple occasions - and at least 15,000 dead people were still registered on the active voting rolls.<sup>4</sup>

Investigations by both the *Milwaukee Journal Sentinel* and a Joint Task force formed by the Milwaukee U.S. Attorney's Office and local law enforcement agencies found thousands of fraudulent and suspicious votes in that city, in a state that John Kerry won by only 11,384 votes in the 2004 election. Among the findings were that Milwaukee showed at least 4,500 more votes cast than the number of people listed as voting, as well as instances of suspected double voting, voting under fictitious names, and voting in the names of deceased voters.<sup>5</sup> As the *Milwaukee Journal Sentinel* noted, some of this voter fraud could have been prevented through photo identification since the Task Force had noted "cases of persons voting in the name of a dead person or as someone else...persons listed as voting who said they did not vote...people [who]

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<sup>1</sup> See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets: The Persistence of Corruption in American Politics* (1996); John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy* (2004); Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004* (2005); Publius, "Securing the Integrity of American Elections: The Need for Change," *Texas Review of Law & Politics*, Vol. 9, No. 2 (Spring 2005).

<sup>2</sup> Publius at 288. See also "Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election," American Center for Voting Rights, August 2, 2005, available at <http://www.ac4vr.com/reports/072005/default.html>.

<sup>3</sup> Testimony of Patrick Rogers, Committee on House Administration, U.S. House of Representatives, Hearing on Non-Citizen Voting, June 22, 2006, <http://cha.house.gov/hearings/Testimony.aspx?TID-896>.

<sup>4</sup> "Even Death Can't Stop Some Voters – Records: Illegally Cast Ballots Are Not Rare," *The Atlanta Journal-Constitution*, November 6, 2000.

<sup>5</sup> Preliminary Findings of Joint Task Force Investigating Possible Election Fraud, May 10, 2005, available at <http://www.gwu.edu/~action/2004/states/wifraud051005.html>.

registered and voted with identities and addresses that cannot in any way be linked to a real person.”<sup>6</sup> These cases illustrate the need for requiring voters to show photo identification at the polls to authenticate their identity.<sup>7</sup>

A related and growing problem that also supports the need for requiring photo identification when voting is the increased number of noncitizens, both legal and illegal, who are registering to vote and voting in U.S. elections.<sup>8</sup> In the past four years alone, the Department of Justice has convicted more than a dozen noncitizens in Florida for registering and voting in elections in Broward, Miami-Dade, St. Lucie, Martin, and Palm Beach Counties, including one individual, Rafael Velasquez, who was a former candidate for the Florida legislature.<sup>9</sup> While this may seem to be a relatively small number of convictions, it is important to keep in mind that the Department of Justice has not conducted any comprehensive or systematic check of voter registration rolls in Florida to find noncitizens. There are at least 1.5 million noncitizens of voting age in Florida – “only 540 of them would have had to vote (or 540 more ineligible voters than may actually have voted) for Gore to reverse the presidential winner” in the 2004 election.<sup>10</sup> Could this many noncitizens vote in any one election? That question is succinctly answered by the findings of the Committee on House Oversight in the Dornan-Sanchez congressional election dispute in California in 1997. The Committee found 748 invalid votes due to noncitizens who had registered illegally in just one congressional district.<sup>11</sup>

According to Dan Stein of the Federation for American Immigration Reform, there were 11 states carried by President Bush in the 2000 election that “had small enough winning vote margins that voting by noncitizens could have tipped the results to Vice President Gore.”<sup>12</sup> As another example of the prevalence of this problem, in a February 8, 2005 report to the President of the Utah Senate, the Legislative Auditor General John Schaff found that more than 58,000 illegal immigrants had Utah drivers’ licenses and 37,000 had nondriver’s license identification cards. Almost 400 of these illegal aliens had registered to vote and at least 14 had actually voted

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<sup>6</sup> Greg J. Browksi, “Inquiry Finds Evidence of Fraud in Election,” *Milwaukee Journal Sentinel*, May 11, 2005.

<sup>7</sup> Although this paper focuses on voting in polling places, the many reported cases of absentee ballot fraud make it clear that individuals submitting absentee ballots by mail should be required to include photo copies of identification documents with their ballots as well.

<sup>8</sup> Publius at 292-296. At least eight of the 9/11 hijackers were registered to vote. Diane Ravitch, “Were the Hijackers Registered to Vote?” October 29, 2001, Hoover Institute; “House Passes Strong Border Security,” Press Release of Cong. Sam Johnson, February 11, 2005.

<sup>9</sup> “Department of Justice to Hold Ballot Access and Voting Integrity Symposium,” Press Release of Department of Justice, August 2, 2005; “Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005,” Public Integrity Section, Criminal Division, United States Department of Justice.

<sup>10</sup> Testimony of Dan Stein, President, Federation for American Immigration Reform, Committee on House Administration, U.S. House of Representatives, Hearing on Non-Citizen Voting, June 22, 2006, <http://cha.house.gov/hearings/Testimony.aspx?TID=893>.

<sup>11</sup> Comm. on House Oversight, “Dismissing the Election Contest Against Loretta Sanchez,” H.R. Doc. No. 105-416, Feb. 12, 1998, p. 15.

<sup>12</sup> Testimony of Dan Stein (“[t]hose states were Colorado, Florida, Georgia, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Tennessee, Texas, and Virginia. A switch of three votes in the Electoral College from Bush to Gore would have reversed the outcome of that election, so that voting of enough noncitizens to reverse the outcome in any one of those 11 states would have reversed the final outcome.”)

in Utah elections. In the ongoing lawsuit in Arizona over the state's new requirement that individuals registering to vote show proof of citizenship, the plaintiffs have apparently been forced to concede that Arizona has uncovered several hundred instances in which noncitizens were fraudulently registered to vote.<sup>13</sup> A review in 2005 by Paul Bettencourt, the Voter Registrar for Harris County, Texas, the third largest county in the country, found at least 35 cases in which noncitizens applied for or received a voter card, including a Brazilian woman who voted at least four times. As Bettencourt stated, "we regularly have elections decided by one, two, or just a handful of votes in any one of our more than 400 local government jurisdictions."<sup>14</sup>

It should be kept in mind that the federal government does not cooperate with inquiries by local election authorities on the immigration status of registered voters. Even if it did, it could only provide information on noncitizens that are in its files – individuals who are here legally and illegal immigrants who have been caught and a file created. Since the vast majority of illegal immigrants are not in its information system, the federal government could not provide accurate information on every registered voter even if it wanted to. Since more than half of the states do not require proof of legal presence in the U.S. to apply for a driver's license and the National Voter Registration Act (also known as Motor Voter) requires states to offer voter registration to persons who apply for a driver's license, voter rolls are guaranteed to become "inflated by non-citizens who are registered to vote... [t]he only question is the number."<sup>15</sup>

The solution to preventing fraudulent votes from being cast in polling places is to require all voters to present photo identification, a recommendation made by the bipartisan Carter-Baker Commission on Federal Election Reform. The Commission's recommendation was based on photo identifications issued under the REAL ID Act of 2005,<sup>16</sup> which requires states to verify each individual's full legal name, date of birth, address, social security number, and U.S. citizenship before the individual is issued a driver's license or personal identification card.<sup>17</sup> Similarly, the solution to preventing noncitizens from registering and voting in elections is to require all individuals registering to vote to provide proof of citizenship.

Those opposed to these requirements argue that they are unnecessary and discriminatory, and will lead to reduced turnout by minority voters. However, contrary to those claims, the documented history of fraudulent voter registrations and voter fraud, and increasing incidents of noncitizens registering and voting, show the need for such requirements. As former Congresswoman Susan Molinari pointed out, "[f]ar from discriminatory, a mandatory voter ID

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<sup>13</sup> *Gonzalez v. Arizona*, CV-06-1268 (D. Az. June 19, 2006), Brief of Protect Arizona Now and Washington legal Foundation as Amici Curiae in Opposition to Motions for Preliminary Injunction, p. 13.

<sup>14</sup> Testimony of Paul Bettencourt, Tax Assessor-Collector and Voter Registrar, Harris County, Texas, Committee on House Administration, U.S. House of Representatives, Hearing on Non-Citizen Voting, June 22, 2006, <http://cha.house.gov/hearings/Testimony.aspx?TID=895>.

<sup>15</sup> Testimony of Patrick Rogers.

<sup>16</sup> Pub. L. No. 109-13, 49 U.S.C. §30301.

<sup>17</sup> Report of the Commission on Federal Election Reform Building Confidence in U.S. Election, September 2005, pages 18-21, available at [http://www.american.edu/ia/cfer/report/full\\_report.pdf](http://www.american.edu/ia/cfer/report/full_report.pdf). The author was one of the experts consulted by the Commission.

provides means by which more Americans may obtain the identification already required for daily functions – such as cashing a check, entering a federal building, or boarding an airplane.”<sup>18</sup> There is also no evidence that minority voters have less access to identification documents than other voters, or that requiring proof of citizenship will disproportionately affect minority voters or lead to lower turnout of eligible voters if either requirement is implemented. As John Lott concluded in a recent study, “the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted.”<sup>19</sup>

On October 29, 2002, President George Bush signed into law the Help America Vote Act of 2002 (“HAVA”).<sup>20</sup> HAVA contained the first nationwide identification requirements for voters. It applies to first-time voters who register by mail and who have not previously voted in a federal election.<sup>21</sup> Under §303(b)(2)(A) of HAVA, when voting in person, such voters must present 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. Voters can avoid this requirement if they submit a copy of one of these documents with their voter registration form or if they drop off their registration form with an election official *instead* of mailing it in.<sup>22</sup> First-time registrants voting by mail using an absentee ballot must submit a copy of one of these documents with the absentee ballot. Any voter who does not have any of these documents can vote a provisional ballot that must be verified by local election officials to determine whether the voter is eligible to vote.<sup>23</sup> States and localities were required to comply with these provisions beginning January 1, 2004.<sup>24</sup> However, HAVA specifically provided that these identification requirements, as well as the other requirements in Title III of the law such as provisional voting and statewide computerized voter registration lists, were “minimum requirements” and nothing prevented a state from establishing requirements “that are more strict” so long as they are not inconsistent with other federal laws.<sup>25</sup>

Spurred in part by the passage of HAVA and the 2004 election, a number of states such as Georgia, Indiana, and Missouri passed legislation implementing photo identification requirements for voters that were stricter than the HAVA requirement. In addition to a voter identification requirement, Arizona also passed a requirement that an individual registering to vote show proof of citizenship. All of these state statutes have been attacked in court in litigation alleging violations of state law, the Voting Rights Act, Equal Protection, or the 24<sup>th</sup> Amendment (poll taxes). The objection to photo identification requirements is that they will reduce the turnout of black voters because fewer blacks possess identification documents than

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<sup>18</sup> *Id.* at 90.

<sup>19</sup> John R. Lott, Jr., “Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on Voter Participation Rates,” August 18, 2006, available at <http://ssrn.com/abstract=925611>.

<sup>20</sup> H.R. 3295, Public Law 107-252, 42 U.S.C. 15301 *et. seq.*

<sup>21</sup> §303(b)(1), 42 U.S.C. §15483(b)(1).

<sup>22</sup> This illustrates a major defect in HAVA – it is still possible for an individual to register to vote without any check being made of his identity.

<sup>23</sup> §303(b)(2)(B) and §302(a)(3) and (4), 42 U.S.C. §§15483(b)(2)(B), 15482(a)(3) and (4).

<sup>24</sup> §303(d)(2), 42 U.S.C. §15483(d)(2).

<sup>25</sup> 42 U.S.C. §15484.

whites or that they will be intimidated by identification requirements and will not vote. These theories, however, are mostly anecdotal and not based on any objective evidence.<sup>26</sup> The new statutes passed by Georgia, Indiana, Missouri, and Arizona are either too recent to judge their possible effect on the turnout of voters or have not been implemented because of restraining orders. However, a number of states (including Georgia) have had less strict voter identification requirements in place for a number of years, and a review of turnout in those states reveals that they not only have no effect on the turnout of black voters, turnout actually increased after implementation of some requirements. Additionally, available information on photo identification possessed by individuals, particularly driver's licenses, shows no discrepancy between blacks and whites.

Driver's licenses, a primary form of picture identification, are possessed by a vast majority of Americans. According to an FEC report covering the 1995-96 period, approximately 87% of persons 18 years and older have driver's licenses while an additional 3% or 4% have a photo identification card issued by the State motor vehicle agency.<sup>27</sup> The Federal Highway Administration ("FHA") reported in 2004 that the number of licensed drivers age 18 and over was 195,432,072.<sup>28</sup> Since the total population of the U.S. age 18 and over in 2004 according to the Census Bureau was 215,694,000, the percentage of the U.S. voting age population ("VAP") with a driver's license was 90.6%. Using the FEC's 3% to 4% figure for additional non-driver's license identification cards, approximately 94 to 95% of the VAP has, at a minimum, photo identification documents issued by state motor vehicle authorities. The FHA does not have information on driver's licenses by race; however, these statistics show that the number of individuals of voting age who do not have photo identification is very small.

Claims have also been made, particularly in the litigation in Georgia, that photo identification requirements discriminate against the elderly. But according to the Federal Highway Administration, the number of older Americans who hold driver's licenses as a percentage of their age group is surprisingly high. For example, 90.7% of persons age 65 to 69 have a driver's license; 86.5% of persons age 70 to 74 have a license; and 82% of persons age 75

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<sup>26</sup> The University of Wisconsin-Milwaukee released a study last year claiming that there is a racial disparity in the driver's licenses held by Wisconsin residents. John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," June 2005, available at [www.eti.uwm.edu](http://www.eti.uwm.edu). However, this study admits that the data it obtained from Wisconsin on "DOT photo ID utilization was only available at the state level by age and gender," and not by race. As John Lott points out, this type of study "provides only a very crude measure of whether photo ID requirements will prevent people from voting. Some people without driver's licenses will not vote even when there are no photo ID requirements and others will go out to get a photo ID in order to vote." Lott at 3.

<sup>27</sup> *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996*, Federal Elections Commission, page 5-6.

<sup>28</sup> *Licensed Drivers by Sex and Ratio to Population -2004*, U.S. Department of Transportation, Federal Highway Administration, Highway Statistics, 2004, available at <http://www.fhwa.dot.gov/polic/ohim/hs04/dl.htm> For this calculation and all other calculations on driver's licenses in this paper, the number of licensed drivers under the age of 18 as listed in the table, *Licensed Total Young Drivers, by Age, 2004*, are subtracted from the total numbers for the U.S. and individual states listed in the first table. That number is then compared to the voting age population provided by the Census Bureau reports on registration and turnout in the 2004 election. These tables will be cited throughout this paper collectively as "Federal Highway Administration, Highway Statistics, 2004."



to 79 have a license.<sup>29</sup>

The results of the 2004 election certainly do not support the claim that an identification requirement will decrease turnout. HAVA's national identification requirements, although limited, were in effect for the first time all across the country. However, turnout was 60.7% of the voting age eligible population,<sup>30</sup> an increase of 6.4 percentage points over the turnout of 54.3% of the eligible population in the 2000 presidential election. This was the largest increase in turnout since the 1948 to 1952 election, when turnout increased by 10.1 percentage points.<sup>31</sup> The Census Bureau publishes a report every two years on voting and registration in federal elections based on responses from surveys. A comparison of the 2000 and 2004 reports shows that in the 2000 election, 56.8% of the eligible black population reported voting in the election. In 2004, when HAVA's limited identification requirement was in effect, 60% of the eligible black population voted, an increase of 3.2 percentage points.<sup>32</sup>

Another revealing analysis is obtained by reviewing the experience of four states that imposed in-person identification requirements on voters at the precinct. South Carolina, Georgia, Virginia, and Louisiana, allow or allowed a voter to present either photo identification or one of a long list of other documents. All but South Carolina allowed a signed affirmation of the voter's identity if the voter does not have the required identification documents. Having an affirmation exception might prevent decreases in minority voter turnout if it is actually true that minorities do not have identification documents. Nevertheless, such an exception would probably not reduce the intimidation factor if it is correct that minorities are intimidated by the challenge of presenting identification or having to take the extra step of completing an affidavit. Turnout would also be reduced (even with an affirmation exception) if it is true that identification requirements are applied in a discriminatory manner against black voters as has been claimed.<sup>33</sup> However, an examination of the turnout figures in presidential elections in South Carolina, Virginia, Georgia, and Louisiana, states that require identification at the polls, refutes these claims, as does the experience of Alabama and Florida.<sup>34</sup>

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<sup>29</sup> *Distribution of Licensed Drivers – 2004 by Sex and Percentage in Each Age Group and Relation to Population*, U.S. Department of Transportation, Federal Highway Administration, Highway Statistics 2004; available at <http://www.fhwa.dot.gov/policy/ohim/hs04/hm/dl20.htm>.

<sup>30</sup> U.S. Election Assistance Commission, *Summary of the 2004 Election Day Survey*, September 2005, p. 7.

<sup>31</sup> Committee for the Study of the American Electorate, "Turnout Exceeds Optimistic Predictions: More Than 122 Million Vote, Highest Turnout in 38 Years," January 14, 2005, at 1, available at [http://election04.ssrc.org/research/csae\\_2004\\_final\\_report.pdf](http://election04.ssrc.org/research/csae_2004_final_report.pdf).

<sup>32</sup> U.S. Census Bureau, "Voting and Registration in the Election of November 2000" (February 2002), Table A; Voting and Registration in the Election of November 2004 (March 2006), Table B. These Census Bureau reports are based on surveys conducted by the Census to determine the rates at which individuals register and vote in elections. While these self-reporting surveys may inflate actual results, they provide the best data available on turnout and can be compared historically and geographically since any inflation will be similar.

<sup>33</sup> "Rights Groups Say Voter Bill Erects Hurdles," *New York Times*, October 7, 2002. The NAACP claims that if blacks do not have identification, they are sent home, but if whites do not have identification, they are allowed to vote.

<sup>34</sup> It must be kept in mind when reviewing turnout rates that other factors may influence turnout such as local races of particular interest to voters and other historical and cultural factors.

**Percentage Turnout of Voting Age Population**<sup>35</sup>  
(increase/decrease between elections)

<i>Year</i>	<i>South Carolina</i>	<i>Virginia</i>	<i>Georgia</i>	<i>Louisiana</i>	<i>National</i>
1984	40.66%	50.69%	42.05%	54.55%	53.11%
(-/+)	(-1.75)	(-2.46)	(-2.65)	(-3.27)	(-3.0)
1988	38.91%	48.23%	39.4%	51.28%	50.11%
(-/+)	(+6.09)	(+4.61)	(+6.77)	(+8.55)	(+4.98)
1992	45%	52.84%	46.17%	59.83%	55.09%
(-/+)	(-3.44)	(-5.3)	(-3.74)	(-2.85)	(-6.01)
1996	41.56%	47.54%	42.43%	56.98%	49.08%
(-/+)	(+5.04)	(+5.46)	(+1.37)	(-2.75)	(+2.22)
2000	46.6%	53%	43.8%	54.2%	51.3%
(-/+)	(+4.6)	(+3.6)	(+7)	(+4.1)	(+9.6)
2004	51.2%	56.6%	50.8%	58.3%	60.9%

***South Carolina***

Under South Carolina Code §7-13-710, a voter must present his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department

<sup>35</sup>Unless otherwise noted, national and state turnout figures are based on reports produced previously by the Federal Election Commission and now available on the website of the U.S. Election Assistance Commission; the EAC took over responsibility for maintaining election statistics when it was created by HAVA. Historical election turnout information is available at [www.eac.gov](http://www.eac.gov). The EAC changed the turnout analysis for the 2004 election to citizen voting age population from voting age population, as conducted by the FEC for the 2000 and prior elections. While CVAP is more accurate, this change would obviously makes comparisons between 2004 and prior years difficult. Therefore, the historical turnout provided in this chart from 1984 to 2000 is for the voting age population from historical data; however, the turnout information for 2004 for the VAP is taken from electionline.org, "Holding Form: Voter Registration 2006," July 2006, p. 15.

of Public Safety at the polls. Under an amendment passed in 1988, if the voter is not licensed, the voter can alternatively present the written registration notification received after registering to vote as required by §7-5-125. This exception was first effective for the 1988 general election.

An examination of South Carolina's turnout figures shows no effect from the state's identification requirements even with the state's significant minority population. According to the 2000 Census, South Carolina was 67.2% white and 29.5% black.<sup>36</sup> The percentage of the voting age population with driver's licenses in 2004 was 94.5%.<sup>37</sup>

South Carolina is one of the only states that provides turnout statistics by race. From 1984 to 2004, the total turnout broken out by the percentages of white/nonwhites voting in the general election was as follows.<sup>38</sup>

<u>Year</u>	<u>Total voting</u>	<u>White Turnout</u>	<u>Non-White Turnout</u>
1984	1,018,701	754,155 (74%)	264,546 (26%)
1988	1,041,846	796,542 (76.45%)	245,304 (23.55%)
1992	1,237,467	950,556 (76.8%)	286,911 (23.2%)
1996	1,203,486	908,503 (75.5%)	294,983 (24.5%)
2000	1,433,533	1,082,784 (75.5%)	350,749 (24.5%)
2004	1,631,148	1,197,416 (73.41%)	433,732 (26.59%)

<sup>36</sup>*State and County Quick Facts: South Carolina*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/45000.html>.

<sup>37</sup>Federal Highway Administration, *Highway Statistics*, 2004.

<sup>38</sup>*South Carolina General Election, Statewide Votes Cast, Demographics by Race*, [www.state.sc.us/cgi-bin/scs...countykey=ALL&regvot=VOT&demo=RACE](http://www.state.sc.us/cgi-bin/scs...countykey=ALL&regvot=VOT&demo=RACE).

These figures reveal that in 1988 there was a slight drop in the number of nonwhite voters when compared to the 1984 election. The percentage of such voters was down 2.45 percentage points in the year that voters could use the voter registration card sent to all voters after they register in place of a South Carolina driver's license. If nonwhite voters had experienced prior problems voting due to the lack of a license, turnout should have increased, not decreased, in the election year when the voter registration card issued to all voters could be used as an alternative. However, this did not occur. A Census survey shows that despite the voter identification requirement, the turnout percentage of the black VAP in South Carolina has steadily risen since 1988, with the exception of 2004, and a slightly *higher* percentage of the black VAP turned out to vote in the 2000 election than the white VAP: 60.7% vs. 58.7%.<sup>39</sup> The total number of nonwhites voting has steadily increased since 1988, rising from 245,304 voters to 433,732 voters in 2004.

**Census Survey of Turnout of VAP by Race**  
***South Carolina***

<i>Year</i>	<i>White</i>	<i>Black</i>
1988	52.3%	40.7%
1992	61.6%	48.8%
1996	56.2%	49.9%
2000	58.7%	60.7%
2004	63.4%	59.5%

Similarly, no conclusions can be drawn of any kind of negative effect from identification requirements on the general trend of South Carolina's turnout when compared to national turnout. South Carolina has generally had a lower turnout than the majority of states. However, there are other states without identification requirements with lower turnout. Although the 1988 turnout of VAP in South Carolina was below the national average of 50.11%, no significance can be attributed to this fact since other states without identification requirements have had lower turnout than South Carolina in different elections. In 2000, for example, South Carolina ranked 44<sup>th</sup> in terms of turnout.

In years that national turnout has declined, South Carolina's turnout has not decreased as much as the national decline; while in years that the national turnout has increased, South Carolina's turnout has generally increased at a greater rate (with the exception of 2004). For example, turnout declined nationally by 3 points from 1984 to 1988 but only declined 1.75 points in South Carolina. From 1988 to 1992, national turnout increased by 4.98 points from 50.11% to 55.09% yet turnout in South Carolina increased by 6.09 points, going from 38.91% to

<sup>39</sup>Table 4a. *Reported Voting and Registration of the Total Voting-Age Population by Sex, Race, and Hispanic Origin, for States: November 2000.* U.S. Census Bureau, at <http://www.census.gov/population/socdemo/voting/p20-542/tab04a.pdf>. All references in this paper to self-reported turnout of black and white voters come from these Census Bureau surveys of past presidential elections and will be referenced as "Census Bureau reports."

45%. This trend was repeated in 1992-1996 (national decline of 6.01 vs. decline of only 3.44 in South Carolina) and 1996-2000 (national increase of 2.22 vs. increase of 5.04 in South Carolina). If identification requirements affected voters, it would be logical to assume that national turnout trends would be offset in states with significant minority populations that arguably make it more difficult for an individual to vote by requiring identification. South Carolina's record does not support that assumption.

### **Virginia**

According to the 2000 Census, Virginia's population is 72.3% white and 19.6% black.<sup>40</sup> The percentage of the voting age population with driver's licenses in 2004 was 93.8%.<sup>41</sup> Virginia passed a voter identification requirement in 1999 that became effective for the 2000 Presidential election.<sup>42</sup> It requires a voter to present a voter registration card, a social security card, a driver's license, or any other photo identification issued by a government agency or employer. If the voter has none of these forms of identification, he can sign an affidavit attesting to his identity. Virginia does not keep statistics on the number of voters who complete such an affidavit in lieu of presenting a form of identification. Like South Carolina, however, Virginia's turnout does not substantiate any claim that having an identification or affidavit completion requirement intimidates voters and affects turnout.

In the 1996-2000 period when the national turnout increased 2.22 points from 49.08% to 51.3% and Virginia's identification requirement became effective, Virginia's overall turnout increased 5.46 points, going from 47.54% to 53%. Even after imposing a new identification requirement, Virginia's turnout increased at *twice* the rate of the national turnout. Virginia ranked 29<sup>th</sup> in turnout in the country. According to Census survey reports, the turnout of black voters in Virginia in comparison to the VAP of blacks dipped slightly, going from 53.3% in 1996 to 52.7% in 2000. The .5 difference between these numbers, however, is within the margin of error of the surveys. Although this study has only examined turnout in presidential elections, it should be noted that reported black turnout in the 1998 congressional election in Virginia according to the Census Bureau was 23.8%; yet in the 2002 congressional election, after implementation of the voter identification requirement, reported black turnout in the state was 27.2%, 3.4 percentage points higher.

### **Georgia**

According to 2000 Census figures, Georgia has a population that is 65.1% white and 28.7% black.<sup>43</sup> The percentage of the voting age population with driver's licenses in 2004 according to Federal Highway Administration statistics when compared to Census reports was

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<sup>40</sup> *State and County Quick Facts: Virginia*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/51000.html>.

<sup>41</sup> Federal Highway Administration, *Highway Statistics*, 2004.

<sup>42</sup> VA. CODE §42.2-643.

<sup>43</sup> *State and County Quick Facts: Georgia*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/13000.html>.

89.8%.<sup>44</sup> Georgia's controversial 2005 photo identification law was actually an amendment to an existing state statute, reducing the number of acceptable forms of identification from 17 to six. In 1997, Georgia first imposed an identification requirement, including both photo identification and a lengthy list of acceptable non-photo identification documents with an affidavit exception.<sup>45</sup> It was effective for the 1998 Congressional election and was first effective for a presidential election in 2000. Under the 2005 amendment, permissible documents are a driver's license, a federal or state government photo identification, a passport, a military photo identification or a tribal photo identification. The affidavit exemption was eliminated. Discussion of the amended version of the statute will follow a discussion of the effect of the earlier identification law.

Turnout in Georgia has historically been amongst the lowest in the country. In the 1996-2000 period when the national turnout increased by 2.22 points and Georgia's identification requirement became effective, Georgia's turnout *increased* 1.37 points, going from 42.43% to 43.8%. In comparing that increase with the increase/decrease in turnout of all other states, Georgia ranked 37<sup>th</sup> in the country, ahead of Indiana which suffered a 3.73 point decline in turnout and behind Alaska with a 9.56 point increase in turnout from 1996 to 2000 (the largest increase in turnout of any state). Given Georgia's large minority population, a significant decrease in turnout in the 2000 election would have been expected if the assumptions underlying objections to identification requirements are valid. However, Georgia's turnout *increased* although not at as great a rate as the national increase.

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<sup>44</sup>Federal Highway Administration, Highway Statistics, 2004.

<sup>45</sup>GA. CODE §21-2-417.

Additionally, according to a Census Bureau survey, a *higher* percentage of blacks than whites reported voting in the 2000 election: 51.6% vs. 48.3%.<sup>46</sup> This compares to a Census report for the 1996 election that shows 45.6% of blacks voted and 52.3% of whites voted.<sup>47</sup> Therefore, the percentage of blacks reporting voting in comparison to the black VAP actually increased by 6 points *after* identification requirements became effective. It appears that black voters were not affected by Georgia's identification requirements in the first presidential election after the law became effective. In the 2004 election, Georgia's total turnout rate increased 7 percentage points from the 2000 election, the tenth largest increase in the nation according to the Committee for the Study of the American Electorate. Even with the state's identification requirement, the Census Bureau survey shows that black voters again reported voting at a higher rate than whites in the 2004 election, 54.4% vs. 53.6%, an increase over their turnout in the 2000 election.

**Census Survey of Turnout of VAP by Race**  
***Georgia***

<i>Year</i>	<i>White</i>	<i>Black</i>
1996	52.3%	45.6%
2000	48.3%	51.6%
2004	53.6%	54.4%

Because Georgia is covered by Section 5 of the Voting Rights Act,<sup>48</sup> the state was required to submit the 2005 amendment requiring photo identification to the Department of Justice ("DOJ") before it became effective. DOJ reviews such submissions under a retrogression standard, i.e., will the voting change disproportionately affect minority voters and put them in a worse position than under the current law. DOJ precleared the law, finding no discriminatory effect on minority voters, and explained the reasons for its preclearance in a letter to Senator Christopher Bond on October 7, 2005.<sup>49</sup> This letter provides valuable information on the question of how many voters possess photo identification and whether there is any significant racial disparity. In fact, the letter states that on the primary claim that "African-American citizens in the State are less likely than white citizens to have the requisite photo identification," that assertion "is not true." DOJ made the following findings:

- Georgia's Department of Driver Services ("DDS") showed 6.4 million photo identification holders, very close to the 6.5 million VAP projected by the Census Bureau, far larger than the 4.5 million registered voters in Georgia. The Census

<sup>46</sup> Census Bureau reports.

<sup>47</sup> Census Bureau reports.

<sup>48</sup> 42 U.S.C. §1973c.

<sup>49</sup> Letter of October 7, 2005, from William E. Moschella, to Sen. Christopher S. Bond. This letter is available on DOJ's website at [http://www.usdoj.gov/crt/voting/misc/ga\\_id\\_bond\\_ltr.htm](http://www.usdoj.gov/crt/voting/misc/ga_id_bond_ltr.htm). The discussion of the preclearance in this paper is based solely on publicly available information and documents.

projection also included ineligible voters such as 50,000 prisoners and 228,000 illegal aliens.

- DDS had racial data for 60% of the card holders – the card holders who register to vote when they apply for a license. 28% of those card holders were black, slightly higher than the black percentage of the VAP in Georgia, indicating that of the DDS applicants who register to vote, blacks hold DDS identification at a *slightly higher* rate than white Georgians.
- Student photo identification issued by all Georgia state colleges are acceptable under the amended law and data from the university system showed that black students represented 26.8% of public college students, slightly more than their share of the state VAP in 2000.
- 2000 Census data showed that 19.4% of blacks worked for the government at the local, state, or federal level in Georgia, versus only 14.3% of whites. Blacks therefore have greater access to government employee identification.

Georgia also established a mobile bus system to provide DDS identification cards to locations remote from DDS offices and provided such cards to indigents for free. Despite all of these findings, a federal court issued an injunction against implementation of the law.<sup>50</sup> However, the court did *not* find any violation of the Voting Rights Act; the judge based his injunction on the Equal Protection clause due to problems the law would supposedly cause for elderly and poor voters (not minorities), and the 24<sup>th</sup> Amendment prohibition against poll taxes despite the state identification card being free for indigents. The judge granted a preliminary injunction against the statute in a 120-page slip opinion issued two days after the hearing on the matter. Since this paper is concerned with turnout results, an in-depth analysis of this court opinion will not be presented. However, the court's legal analysis is deeply flawed, particularly its view that incidental costs of obtaining a photo identification constitute a "poll tax." This is discussed at length in the Indiana decision cited later in this paper, where the court correctly noted that "the imposition of tangential burdens does not transform a regulation into a poll tax."<sup>51</sup>

The Georgia legislature amended the law in 2006 to make the state identification card free to any voter who requested one, without having to declare indigence, and authorized every county in the state (not just DDS offices) to issue photo identification cards. Despite these changes, the same federal judge issued a 193-page slip opinion again only two days after a hearing enjoining implementation of the amended statute.<sup>52</sup> However, this opinion was based on the short time

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<sup>50</sup> *Common Cause v. Billups*, 406 F.Supp.2d 1326 (N.D. Ga. 2005). In what may have been forum shopping, this lawsuit was not filed in the state capitol of Atlanta where the law was passed by the legislature and signed by the governor. It was filed in Rome, Georgia, where there is only one federal judge. The named defendant, Secretary of State Cathy Cox, also stated on numerous occasions, including during her testimony, her opposition to the law. See Letter from Secretary of State Cathy Cox to Governor Sonny Perdue, April 8, 2005, available at <http://www.aclu.org/VotingRights/VotingRights.cfm?ID=18652&c=168>; 406 F.Supp.2d at 6-8.

<sup>51</sup> *Indiana Democratic Party v. Rokita*, No. 1:05-0634 (S.D. Ind. April 14, 2006), slip op. at 90.

<sup>52</sup> *Common Cause v. Billups*, No. 4:05-00201 (N.D. Ga. July 14, 2006).



remaining before the July 18<sup>th</sup> primary, the court holding that there was not sufficient time before the primary for individuals to obtain a photo identification or for the state to educate the public about this requirement.<sup>53</sup>

In June, the Secretary of State also released a statement claiming that a comparison of the state's voter registration roll with the state's driver's license list revealed 676,000 registered voters without a driver's license.<sup>54</sup> This analysis, however, was deeply flawed, suffering from many of the same shortcomings as the expert analysis submitted to a federal court in the Indiana voter identification lawsuit that is discussed below. Most importantly, despite her access to other state records, the Secretary of State only compared the voter registration list to driver's license records, and did not run a data matching program with other available state records on photo identification cards acceptable under the law such as student identification cards issued by the state university system or employee identification cards issued by the state and local governments.<sup>55</sup> Individuals on the list without a social security number were shown as "not having a valid Georgia driver's license or DDS-issued Photo ID card."<sup>56</sup> She also failed to eliminate the names of military and overseas voters who are not subject to the identification requirements – Georgia has several large military installations and local election officials can identify military and overseas voters from their past applications for absentee ballots under the Uniformed and Overseas Citizens Absentee Voting Act.<sup>57</sup> The problems with Secretary Cox's list of registered voters who supposedly did not have photo identification cards was vividly illustrated by the fact that it mistakenly included a member of the state election board, relatives of two other members of the board (all of whom have photo identification)<sup>58</sup> and, according to the testimony of the vice-chair of the state election board at the court hearing, included the federal judge in the voter identification case.

### *Louisiana*

According to the 2000 Census, Louisiana has a population that is 63.9% white and 32.5% black.<sup>59</sup> The percentage of the voting age population with driver's licenses in 2004 was 95.9%.<sup>60</sup> In 1997, Louisiana passed Act 779 amending the election code to require voters to identify

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<sup>53</sup> *Id.* at 169. The court also changed its mind on the issue of a poll tax, adopting the analysis of the Indiana decision and holding that providing identification cards without charge eliminated the claim that it was a poll tax despite the incidental costs involved. *Id.* at 177.

<sup>54</sup> "Demographic Analysis Shows that Registered Voters Lacking a Driver's License or State-Issued Georgia ID Card are Disproportionately Elderly and Minority," Press Release of Secretary of State Cathy Cox, June 23, 2006, available at <http://www.sos.state.ga.us/pressrel/062306.htm>.

<sup>55</sup> *Billups*, slip op. at 129.

<sup>56</sup> *Id.* at 127.

<sup>57</sup> 42 U.S.C. §1973ff. In fact, §703 of HAVA amended UOCAVA to require states to report to the EAC the number of absentee ballots sent to uniformed services and overseas voters.

<sup>58</sup> Carlos Campos, "No-Photo Voter List Criticized by GOP," *Atlanta Journal-Constitution*, August 5, 2006.

<sup>59</sup> *State and County Quick Facts: Louisiana*, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/22000.html>.

<sup>60</sup> Federal Highway Administration, Highway Statistics, 2004.

themselves with a driver's license, other photo identification, or by completing an affidavit.<sup>61</sup> It became effective on August 15, 1997.<sup>62</sup>

During the 1984-2000 period, Louisiana's turnout was higher than the national turnout. Turnout ranged from a low of 1.17 percentage points greater than the national turnout in 1988 to a high of 7.9 points greater in 1996. It was 2.9 points greater in 2000, after identification requirements became effective. Of the five elections, the 2.9 point increase was the third largest. Two other elections (1984 and 1988) had smaller increases. A Census survey reveals that in the 2000 election, 66.4% of the white VAP reported voting and 63.2% of the black VAP reported voting.<sup>63</sup> This compares to a Census report for the 1996 election that shows 62.6% of the white VAP voted and 60.9% of the black VAP voted.<sup>64</sup> Thus, reported turnout of black voters in comparison to the black VAP increased by 2.3 points *after* the identification requirement became effective.<sup>65</sup> Although Louisiana's turnout in the 2004 election as 2.6 points below the total national turnout rate, the 62.1% turnout reported by black voters was 5.8 points *above* the reported national rate of black turnout of 56.3%. One can conclude that black voters in Louisiana have not been detrimentally affected by the state's identification requirements.

**Census Survey of Turnout of VAP by Race**  
*Louisiana*

<i>Year</i>	<i>White</i>	<i>Black</i>
1996	62.6%	60.9%
2000	66.4%	63.2%
2004	64%	62.1%

***Other States – Alabama and Florida***

<sup>61</sup>LA. REV. STAT. ANN. §18:562.

<sup>62</sup>Louisiana Office of the Attorney General, Op. No. 97-0458, October 24, 1997.

<sup>63</sup> Census Bureau reports.

<sup>64</sup> Census Bureau reports.

<sup>65</sup>With a black voting rate of 60.9% in 1996, Louisiana was 10.3 points above the national black participation rate of 50.6% of black VAP as reported by the Census Bureau.

Although it has experienced only one presidential election since implementing a new identification requirement, the experience of Alabama, another Southern state with a large minority population covered under the special provisions of Section 5 of the Voting Rights Act, should be mentioned. Alabama implemented a new voter identification requirement in 2003 similar to HAVA.<sup>66</sup> According to Department of Transportation statistics, 105.5% of the VAP in Alabama hold driver's licenses.<sup>67</sup> In the 2000 election, the Census Bureau reports that 57.2% of blacks voted; in 2004, after the new identification requirement was effective, 63.9% of blacks reported voting, an increase of 6.7 percentage points. Florida, which implemented an identification requirement in 1998 with a variety of acceptable identification documents, also experienced a steady increase in black voter turnout after the effective date of the statute.<sup>68</sup> It went from a reported black voter turnout of 40.5% in 1996 before the identification requirement, to a black turnout of 42.3% in 2000 and 44.5% in 2004 after the identification requirement was effective. Florida also has a very high rate of driver's licenses being held by the VAP in 2004 – almost 99%.

### ***Recently Adopted Laws***

#### ***Indiana***

Indiana passed a photo identification requirement in 2005 as Senate Enrolled Act No. 483. It requires all voters to present a valid photo identification issued either by Indiana or the United States that has a picture of the voter, his name, and an expiration date that is either current or expires after the date of the most recent general election.<sup>69</sup> The law does not apply to absentee voters who send their ballot through the mail or to voters who reside in nursing homes.

A voter without identification can vote a provisional ballot and has until the second Monday following election day to appear before county officials either with a photo identification or with an affidavit stating that he is indigent or has a religious objection to being photographed.<sup>70</sup> The Indiana Democratic Party filed suit against the state, claiming the identification requirement violated the 1<sup>st</sup> and 14<sup>th</sup> Amendments, 42 U.S.C. §1971, and the portions of the Indiana Constitution.

In a ruling on April 14, 2006, a federal judge denied the plaintiffs' motions for summary judgment and granted judgment for the state, holding that the identification requirement is "a constitutionally-valid, reasonable time, place, and manner restriction on voting and on voters."<sup>71</sup> The judge's characterization of the plaintiffs' case was caustic. She stated that they had "not introduced evidence of a single, individual Indiana resident who will be unable to vote...or who

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<sup>66</sup> ALA. CODE § 17-10A-1.

<sup>67</sup> This may be due to Alabama residents who hold both a personal and commercial driver's license.

<sup>68</sup> FLA. STAT. §101.043.

<sup>69</sup> IND. CODE §3-11-8-25.1 and §3-5-2-40.5.

<sup>70</sup> IND. CODE §§3-11.7-5-1; 3-11-7.5-2.5

<sup>71</sup> *Indiana Democratic Party v. Rokita*, No. 1:05-0634 (S.D. Ind. April 14, 2006), slip op. at 5.

will have his or her right to vote unduly burdened.”<sup>72</sup> The plaintiffs moved a political debate in the Indiana General Assembly into a judicial forum, having “failed to adapt their arguments to the legal arena” and basing their case “on little more than their own personal and political preferences.”<sup>73</sup>

The judge did not even allow the expert report prepared for the plaintiffs into evidence because she viewed “the analysis and conclusions set out in it as utterly incredible and unreliable.”<sup>74</sup> The report attempted to compare the voter registration list with driver’s license files, but the court held it failed to account for voter roll inflation, compared demographic data from different years without qualification or analysis, drew obviously inaccurate and illogical conclusions, and failed to qualify the statistical estimates based on socioeconomic data. To the extent any parts of the report could be considered reliable, they actually strengthened the state’s case since, for example, the report showed “an estimated 99% of Indiana’s voting age population already possesses the necessary photo identification to vote.”<sup>75</sup> That perhaps explains why, when Indiana held its federal primary in May after the court’s ruling, “[a]cross Indiana, there were no reports of problems caused by the new requirement, with most areas reporting they did not have to turn away a single voter.”<sup>76</sup>

The court also noted that the supposedly “common sense” claim that persons from lower socioeconomic levels will have a harder time obtaining photo identification because they do not drive or own cars, or have limited financial ability, is not true. To the extent the expert’s socioeconomic analysis was accurate, it actually indicated “that voters without photo identification are not significantly more likely to come from low income segments of society.”<sup>77</sup>

### *Arizona*

Arizona passed Proposition 200 in the 2004 general election. Because Arizona is covered by Section 5 of the Voting Rights Act, the law was also subject to review by DOJ as the Georgia identification law was - DOJ precleared the law without objection. In addition to requiring a voter to show either one identification card with his name, address and photo, or two identification documents with his name and address, Proposition 200 also amended Arizona Revised Statutes §16-166 to require anyone registering to vote to prove U.S. citizenship by providing certain documentation such as a driver’s license, birth certificate, passport, naturalization documents or any other “documents or methods of proof that are established pursuant to the Immigration Reform and Control Act of 1986.” This last standard is particularly

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<sup>72</sup> *Id.* at 3.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 43. The report did not meet the reliability standard for expert opinions set out in Federal Rule of Evidence 702. As just one example of how flawed the report was, the expert claimed there were 989,000 registered voters in Indiana without driver’s licenses. When that number was added to the number of issued licenses (4,569,265), the total of 5,558,265 represents an “incredible 123% of Indiana’s entire voting age population as determined by the Census.” This was obviously wrong. *Id.* at 48.

<sup>75</sup> *Id.* at 51.

<sup>76</sup> Dan Stockman, “Election Day Calm as Voters Comply With Photo ID rule,” *Journal Gazette*, May 3, 2006.

<sup>77</sup> *Rokita* at 53.

noteworthy, since the state will accept any document that the federal government accepts as proof of citizenship. This is a reference to the Employment Eligibility Verification form (Form I-9), prepared by the Department of Homeland Security, which every employer in the United States is responsible for completing on every new employee to verify their employment eligibility as either a citizen or a noncitizen legally present and able to work in the U.S.<sup>78</sup> This requirement makes it difficult for litigants to argue that the state is acting unreasonably or somehow violating federal voting rights laws since Arizona is imposing the same requirement on individuals registering to vote that the federal government imposes on individuals who want to become employed.

However, a lawsuit was filed claiming the Arizona law violates the National Voter Registration Act. On June 19, 2006, a federal judge issued an order refusing to grant a preliminary injunction, correctly holding that “Arizona’s proof of citizenship requirement does not conflict with the plain language of the NVRA” and that “the NVRA does not act as a ceiling preventing states from enforcing their own laws regarding voter qualifications.”<sup>79</sup>

### **Missouri**

The Missouri Voter Protection Act, Senate bills 1014 & 730, requires voters to show photo identification issued by the state or the U.S. government, including the military. Voters with disabilities, sincerely held religious beliefs, and those born before January 1, 1941, are exempt if they execute an affidavit. All nondriver’s license identification cards are issued by the state for free and mobile units will go to nursing homes and other places accessible to the elderly and disabled. Two lawsuits that have been consolidated have been filed against the law in state court claiming violations of state law, but no significant rulings have occurred as this paper goes to print. *Weinschenk and Jackson County v. Missouri*, No. 06AC-00656 and 587 (Cir. Ct. of Cole County, Mo.).

In a very interesting analysis filed in the lawsuit in support of two intervenors, Jeffrey Milyo and Marvin Overby of the University of Missouri evaluated the number of eligible voters in Missouri who may not have photo identification. They estimate that the number of eligible voters out of a VAP of 4.5 million who do not have photo identification issued by Missouri’s motor vehicles department and who are not residents of a nursing home (and thus exempt) was only about 19,000 persons. Comparing the voting age population with the number of identification cards issued by the state yields an estimate of only 51,064 voting age persons without such identification. However, after correcting the Census VAP estimate by taking out ineligible voters such as felons, the mentally incompetent, and individuals who do not meet residency requirements, as well as applying Missouri’s statewide average voter turnout rate, they concluded that the “upperbound estimate for the number of persons who are eligible and may

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<sup>78</sup> The I-9 Form and information about its use is available at <http://www.uscis.gov/graphics/formsfee/forms/i-9.htm>.

<sup>79</sup> *Gonzalez v. Arizona*, No. 06-1268 (D. Ariz. June 19, 2006), slip op. at 9, 12. When Arizona held its election in March, “[t]here were no widespread reports of problems Tuesday in the first elections held under the voter identification requirements of Proposition 200” Matthew Benson, “Proposition 200 Causes Few Headaches at Polls,” *Arizona Republic*, March 15, 2006

choose to obtain a new photo ID is 8,105 persons.”<sup>80</sup>

### ***Conclusion***

The turnout of voters in presidential elections in South Carolina, Virginia, Georgia and Louisiana, states with significant African-American populations, as well as in Alabama and Florida, reveals no evidence substantiating the claim that the turnout of minority voters is negatively affected by identification requirements for voters. Available data indicates that the overwhelming percentage of the voting age population, black and white, already have a form of photo identification. It is, therefore, highly unlikely that new and stricter identification requirements for voters will adversely affect the turnout of minority voters, especially given the fail-safe provisional voting requirements in affect across the country as required by HAVA. Many critics of HAVA’s identification requirements made exactly the same claims, and the turnout in the first presidential election after those requirements became effective saw an upsurge in black voting.

Given the numerous prosecutions for voter fraud that have occurred across the United States in recent years, the thousands of fraudulent voter registration forms submitted to election officials, the types of problems cited in the Wisconsin fraud investigation after the 2004 election, and registration and voting by noncitizens, requiring proof of citizenship to register and photo identification to vote is an important means of ensuring the integrity of our election process.<sup>81</sup> It is not a requirement that will prevent or deter minority voters from casting their ballots, but will help guarantee that their votes are not devalued by fraudulent or noncitizen voting.

*The opinions expressed in this article are those of the author and not those of his employer.*

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<sup>80</sup> Affidavit of L. Marvin Overby, in Support of Intervenors, Dale L. Morris and Missouri Senator Delbert Scott, Exhibit B, “Report on Kathleen Weinschenk et al. v. State of Missouri et al. and Jackson County, Missouri v. State of Missouri (Consolidated),” p. 1, 3, and 5.

<sup>81</sup> Driver’s licenses should only be acceptable as voter identification if they are issued by a state in compliance with the REAL ID Act that requires proof of citizenship or a notation on the face of the card that the holder is not a citizen.

**ACT NUMBER E4019904; EAC CONTRACT NUMBER 06-04  
Personal Services Contract for Interim Expert Services**

**Background**

Section 241 of H.R. 1147 lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to 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. The EAC needs this expert to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two experts, who will work jointly to perform the work described below. This contract is a follow-on agreement to EAC Contract Number 05-66. That agreement for non-severable services expires February 15, 2006, without completion of the project. The originally estimated labor hours for this project were insufficient. As such, the EAC seeks to continue the work started in this previous contract but has changed the scope (or duties) of the contractor to limit project costs. This change is reflected in the scope of work section, below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants and experts under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such, this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). The initial appointment under this agreement shall be for the intermittent employment of an expert as defined by 5 C.F.R. §304.102(d) and (e). The expert (hereinafter "contractor") shall work as required by the EAC, without a regularly scheduled tour of duty. Under no circumstances may contractor work more than 225 hours during the term of this agreement (5 C.F.R. §304.103(c)(2)(i)).

**Supervision and Management.**

The EAC Manager and Contracting Officer's Representative (COR) for this effort is Peggy Sims. Ms Sims will provide taskings, and authorize, supervise, review and approve all work and performance. She will also approve all labor hours on invoices and travel vouchers submitted for compensation under this agreement.

### **Period of Appointment.**

The appointment under this contract is temporary and shall be for a period of up to four months. The contract period shall begin February 26, 2006. The contract may be extended and contractor reappointed for an additional period (not exceed one year) upon agreement of both parties. (See 5 C.F.R. §304.103(c)).

### **Compensation**

The consultant shall be paid at a rate of \$111 per hour. Contractor shall perform the services prescribed by this agreement as directed by the COR on an intermittent basis. However, in any event, the contractor shall not work more than [41 hours] in either of the 2 two week periods that make up each four week pay period. Further, as aforementioned, the contractor may not work more than 225 hours during the term of this agreement. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. COR shall provide contractor notice and authorization when performance under this agreement is required.

The consultant shall not incur overtime and is not eligible for premium pay under subchapter V of chapter 55 of title 5, United States Code. (5 C.F.R. §304.106(b)). The contractor, as an intermittent appointee, is also not entitled to sick or annual leave. Contractor will not receive compensation for Federal holidays when no work is performed. (5 C.F.R. §304.106(b)). The contractor shall not receive automatic adjustments of pay based upon 5 U.S.C. §5303. Contractor's pay rate may be increased at the sole discretion of the Contracting Officer, consistent with Federal regulations. Contractor may be reimbursed for other costs, such as local travel, consistent with this agreement if approved by the COR and submitted in writing via invoice.

### **Travel**

The contractor may be required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC COR. The contractor will be reimbursed for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel. Compensation for travel shall be made in accordance with the rates set forth in the Federal Travel Regulation. The amount reimbursed for travel shall not exceed \$6,500 in Federal Fiscal Year 2006.

### **Release of Information**

As a result of the limited employment relationship created by this agreement, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information. All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All



such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

### **Compensation Procedures**

Compensation shall be made for work done (labor hours) by submitting invoices. Invoices shall be submitted every four weeks from the date of award. A week shall be from Sunday to Saturday. The first pay period shall begin February 26, 2006. Invoices must be submitted every 4 weeks when compensable work under this contract has been performed. The COR will provide the contractor with an invoice schedule, identifying each of the invoice periods, and model invoice forms. Invoices shall be delivered to the COR for review and approval. Each invoice shall:

- (1) Identify each day (by date) that work was performed and the number of labor hours performed that day. Briefly describe the nature of the work performed for that day;
- (2) State the total number of labor hours that have been expended under the agreement for the invoice period;
- (3) State the total number of hours worked for each of the two week periods that make up the total invoice time;
- (4) Provide a cumulative total of hours worked during the entire contract performance period (one year);
- (5) Submit, as a separate line item, all reimbursable travel costs for approval. The submission must provide dates of travel, receipts and other information as required by the Federal Travel Regulation.
- (6) Include the contractor's signature, affirming that information contained in the invoice is accurate.

### **Duty Location**

Contractor's duty station shall be his/her home or place of business. The contractor has access to and shall supply common office equipment to include telecommunications, internet access, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word, Project and Excel). All other resources will be provided by the EAC as needed and at its discretion.

### **Notices**

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To EAC: 1225 New York Avenue, Suite 1100, Washington, DC 20005,  
Attention: Contracting Officer Representative, Peggy Sims.

**To Contractor:** At EAC and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice whichever is later.

**Areas of Responsibility (Statement of Work)**

1. Submit a revised work plan reflecting revised due dates for deliverables.
2. Develop a comprehensive description of what constitutes voting fraud and voter intimidation, in the context of Federal elections.
3. Using the description developed for 2 above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
4. Work in consultation with other 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 Working Group will be provided with the results of the consultant's research (discussed in 2 and 3, above) as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
5. The consultant shall be 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.

**Terms and Conditions**

The following additional terms and conditions shall apply to this personal services contract:

**a. Federal Acquisition Regulation Clauses Incorporated by Reference:**

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. These clauses may be obtained on the internet at <http://farsite.hill.af.mil/>.

52.203-7 Anti-Kickback Procedures (JUL 1995)

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sept 2005)

- 52.215-2 Audit and Records -- Negotiation (Jun 1999)
- 52.224-1 Privacy Act Notification (APR 1984)
- 52.224-2 Privacy Act (APR 1984)
- 52.232-17 Interest (JUN 1996)
- 52.246-25 Limitation of Liability-Services (FEB 1997)
- 52.252-4 Alterations in Contract (APR 1984)

**b. Federal Acquisition Regulation Clauses in Full Text:**

***Contract Termination (FAR 52.249-12)***

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer. (End of Clause)

***Site Visit (FAR 52.237-1)***

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award. (End of Clause)

***Protection of Government Buildings, Equipment, and Vegetation (FAR 52.237-2)***

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price. (End of Clause)

***Covenant Against Contingent Fees (FAR 52.203-5)***

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty,

the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Contingent Fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.  
(End of Clause)

**Disputes (FAR 52.233-1), Alternate I**

(a) This contract is subject to the Contract Disputes Act of 1973, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The contractor shall provide the certification specified in paragraph (d)(2)(ii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or

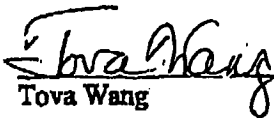
(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

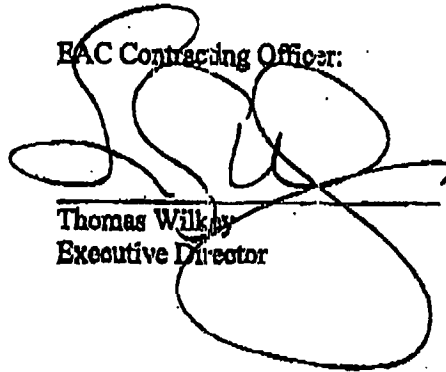
(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.  
(End of Clause)

By signing below, contractor agrees to furnish the personal services set forth or otherwise identified, above, consistent with the conditions noted above and for the consideration stated herein.

Contractor:

  
Tova Wang

EAC Contracting Officer:

  
Thomas Wilkey  
Executive Director

**ACT NUMBER E4019905; EAC CONTRACT NUMBER 06-05**  
**Personal Services Contract for Interim Expert Services**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to 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. The EAC needs this expert to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two experts, who will work jointly to perform the work described below. This contract is a follow-on agreement to EAC Contract Number 05-67. That agreement for non-severable services expires February 25, 2006, without completion of the project. The originally estimated labor hours for the project were insufficient. As such, the EAC seeks to continue the work started in the previous contract but has changed the scope (or duties) of the contractor to limit project costs. This change is reflected in the scope of work section, below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants and experts under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such, this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). The initial appointment under this agreement shall be for the intermittent employment of an expert as defined by 5 C.F.R. §304.102(d) and (e). The expert (hereinafter "contractor") shall work as required by the EAC, without a regularly scheduled tour of duty. Under no circumstances may contractor work more than 225 hours during the term of this agreement (5 C.F.R. §304.103(c)(2)(i)).

**Supervision and Management.**

The EAC Manager and Contracting Officer's Representative (COR) for this effort is Peggy Sims. Ms. Sims will provide taskings, and authorize, supervise, review and approve all work and performance. She will also approve all labor hours on invoices and travel vouchers submitted for compensation under this agreement.

### **Period of Appointment.**

The appointment under this contract is temporary and shall be for a period of up to four months. The contract period shall begin February 26, 2006. The contract may be extended and contractor reappointed for an additional period (not exceed one year) upon agreement of both parties. (See 5 C.F.R. §304.103(c)).

### **Compensation**

The consultant shall be paid at a rate of \$111 per hour. Contractor shall perform the services prescribed by this agreement as directed by the COR on an intermittent basis. **However, in any event, the contractor shall not work more that [41 hours] in either of the 2 two week periods that make up each four week pay period.** Further, as aforementioned, the contractor may not work more than 225 hours during the term of this agreement. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. COR shall provide contractor notice and authorization when performance under this agreement is required.

The consultant shall not incur overtime and is not eligible for premium pay under subchapter V of chapter 55 of title 5, United States Code. (5 C.F.R. §304.106(b)). The contractor, as an intermittent appointee, is also not entitled to sick or annual leave. Contractor will not receive compensation for Federal holidays when no work is performed. (5 C.F.R. §304.106(b)). The contractor shall not receive automatic adjustments of pay based upon 5 U.S.C. §5303. Contractor's pay rate may be increased at the sole discretion of the Contracting Officer, consistent with Federal regulations. Contractor may be reimbursed for other costs, such as local travel, consistent with this agreement if approved by the COR and submitted in writing via invoice.

### **Travel**

The contractor may be required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC COR. The contractor will be reimbursed for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel. Compensation for travel shall be made in accordance with the rates set forth in the Federal Travel Regulation. The amount reimbursed for travel shall not exceed \$3,500 in Federal Fiscal Year 2006.

### **Release of Information**

As a result of the limited employment relationship created by this agreement, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information. All research, information, documents and any other intellectual property (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All



such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express written permission of the EAC.

### **Compensation Procedures**

Compensation shall be made for work done (labor hours) by submitting invoices. Invoices shall be submitted every four weeks from the date of award. A week shall be from Sunday to Saturday. The first pay period shall begin February 26, 2006. Invoices must be submitted every 4 weeks when compensable work under this contract has been performed. The COR will provide the contractor with an invoice schedule, identifying each of the invoice periods, and model invoice forms. Invoices shall be delivered to the COR for review and approval. Each invoice shall:

- (1) Identify each day (by date) that work was performed and the number of labor hours performed that day. Briefly describe the nature of the work performed for that day;
- (2) State the total number of labor hours that have been expended under the agreement for the invoice period;
- (3) State the total number of hours worked for each of the two week periods that make up the total invoice time;
- (4) Provide a cumulative total of hours worked during the entire contract performance period (one year);
- (5) Submit, as a separate line item, all reimbursable travel costs for approval. The submission must provide dates of travel, receipts and other information as required by the Federal Travel Regulation.
- (6) Include the contractor's signature, affirming that information contained in the invoice is accurate.

### **Duty Location**

Contractor's duty station shall be his/her home or place of business. The contractor has access to and shall supply common office equipment to include telecommunications, internet access, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word, Project and Excel). All other resources will be provided by the EAC as needed and at its discretion.

### **Notices**

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To EAC: 1225 New York Avenue, Suite 1100, Washington, DC 20005,  
Attention: Contracting Officer Representative, Peggy Sims.

**To Contractor:** At EAC and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice whichever is later.

**Areas of Responsibility (Statement of Work)**

1. Submit a revised work plan reflecting revised due dates for deliverables.
2. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
3. Using the description developed for 2 above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
4. Work in consultation with other 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 Working Group will be provided with the results of the consultant's research (discussed in 2 and 3, above) as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
5. The consultant shall be 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.

**Terms and Conditions**

The following additional terms and conditions shall apply to this personal services contract:

a. Federal Acquisition Regulation Clauses Incorporated by Reference:

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. These clauses may be obtained on the internet at <http://farsite.hill.af.mil/>.

52.203-7      Anti-Kickback Procedures (JUL 1995)

52.203-12    Limitation on Payments to Influence Certain Federal Transactions (Sept 2005)

- 52.215-2      Audit and Records -- Negotiation (Jun 1999)
- 52.224-1      Privacy Act Notification (APR 1984)
- 52.224-2      Privacy Act (APR 1984)
- 52.232-17     Interest (JUN 1996)
- 52.246-25     Limitation of Liability-Services (FEB 1997)
- 52.252-4      Alterations in Contract (APR 1984)

b. Federal Acquisition Regulation Clauses in Full Text:

*Contract Termination (FAR 52.249-12)*

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer. (End of Clause)

*Site Visit (FAR 52.237-1)*

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award. (End of Clause)

*Protection of Government Buildings, Equipment, and Vegetation (FAR 52.237-2)*

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price. (End of Clause)

*Covenant Against Contingent Fees (FAR 52.203-5)*

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, expect a bona fide employee or agency. For breach or violation of this warranty,

the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Contingent Fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.  
(End of Clause)

*Disputes (FAR 52.233-1), Alternate I*

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)

(i) The contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from

(1) the date that the Contracting Officer receives the claim (certified, if required); or


(2) the date that payment otherwise would be due, if that date is later, until the date of payment.

With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

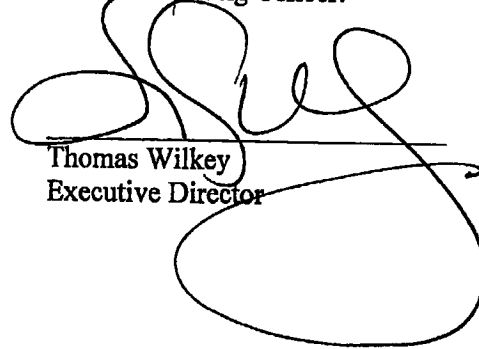
(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.  
(End of Clause)

By signing below, contractor agrees to furnish the personal services set forth or otherwise identified, above, consistent with the conditions noted above and for the consideration stated herein.

Contractor:

  
\_\_\_\_\_  
Job Serebrov

EAC Contracting Officer:

  
\_\_\_\_\_  
Thomas Wilkey  
Executive Director

**ACT NUMBER E4019697; EAC CONTRACT NUMBER 05-66**

**Consulting Services to Assist EAC in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to 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. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). As a result of this unique relationship, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information, travel and conduct. All research, information, documents and any other intellectual property, (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express permission of the EAC.

**Supervision and Management.**

The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist. Ms. Sims will provide taskings, and supervise, review and approve all work and performance.

### **Period of Appointment, Compensation and Travel.**

The period of appointment under this contract is estimated at six months. The appointment shall constitute intermittent appointment (without a regularly scheduled tour of duty) per 5 C.F.R. §340.401(b). The consultant shall not incur overtime. The consultants shall not receive automatic adjustments of pay based upon 5 U.S.C. 5303. The consultants are not eligible for sick and annual leave, nor compensation for work performed on federal holidays. The Consultant is expected to work 450 hours during the estimated six month appointment period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week. The consultant shall be paid at a rate of \$111 per hour. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. The project at issue is sought to be completed within the sixth month period. The period of appointment shall continue until the project, outlined below, is completed.

Consultant's duty station shall be his/her home or place of business. The consultant has access to and shall supply common office equipment to include telecommunications, internet, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word and Excel). Other resources will be provided by the EAC as needed and at its discretion.

The Consultant is required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC per Federal Travel Regulations and EAC policy. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel.

### **Areas of Responsibility**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
2. Using the description developed above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. Work in consultation with other 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 Working Group will be provided with the results of Tasks 1 and 2 as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.



4. The consultant shall be 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 research resulting from this effort.
5. Should the EAC decide to pursue one or more of the recommendations made in the report noted above, the consultant will be responsible for defining the appropriate project scope(s) and preparing Statement(s) of Work sufficient for use in a competitive procurement.

**Compensation Procedures**

Compensation shall be made for work done by submitting invoices. Invoices shall be submitted on a monthly basis. These invoices shall state the number of labor hours that have been expended. Invoices shall be delivered to Ms. Margaret Sims for review and Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005. Compensation for travel shall be submitted by travel voucher consistent with federal travel regulation and EAC requirements.

**Termination**

This consultant contract can be terminated without cause in advance of the current end date by two weeks' notice in writing by either of the parties.

**Estimated Project Timetable.**

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

November 8, 2005

Mr. Job Serebrov  
2110 South Spring Street  
Little Rock, AR 72206

Via U.S. Mail and Facsimile Transmission  
(202) 566-3117

Dear Mr. Serebrov:

Enclosed is a signed personal services contract (EAC 05-67) in the amount for the provision of services to the U.S. Election Assistance Commission (EAC) in researching and developing a plan for a voter fraud and intimidation study. On or about September 1, 2005, an EAC employee communicated to you that EAC agreed to enter this personal services agreement with you. You began work based upon this notice of award. Despite the fact that the agreement was entered and communicated by an unauthorized person, EAC has reviewed the contract and concluded that ratification of this agreement is appropriate. EAC has ratified the agreement made with you on September 1, 2005. EAC has also received your first invoice for the period September 1 through September 30. That invoice will be reviewed and placed in line for payment.

To acknowledge receipt of this contract, please countersign and date below and return one copy of this letter to the attention of Nicole Mortellito.

We appreciate your work on these important efforts.

Sincerely,

Gracia Hillman  
Chair

  
\_\_\_\_\_  
Job Serebrov

**ACT NUMBER E4019698; EAC CONTRACT NUMBER 05-67**

**Consulting Services to Assist EAC in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in elections for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to 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. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). As a result of this unique relationship, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they relate to the release of agency documents and information, travel and conduct. All research, information, documents and any other intellectual property, (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express permission of the EAC.

**Supervision and Management.**

The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist. Ms. Sims will provide taskings, and supervise, review and approve all work and performance.

### **Period of Appointment, Compensation and Travel.**

The period of appointment under this contract is estimated at six months. The appointment shall constitute intermittent appointment (without a regularly scheduled tour of duty) per 5 C.F.R. §340.401(b). The consultant shall not incur overtime. The consultants shall not receive automatic adjustments of pay based upon 5 U.S.C. 5303. The consultants are not eligible for sick and annual leave, nor compensation for work performed on federal holidays. The Consultant is expected to work 450 hours during the estimated six month appointment period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week. The consultant shall be paid at a rate of \$111 per hour. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. The project at issue is sought to be completed within the sixth month period. The period of appointment shall continue until the project, outlined below, is completed.

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### **Areas of Responsibility**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
2. Using the description developed above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. Work in consultation with other 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 Working Group will be provided with the results of Tasks 1 and 2 as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.

4. The consultant shall be 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 research resulting from this effort.
5. Should the EAC decide to pursue one or more of the recommendations made in the report noted above, the consultant will be responsible for defining the appropriate project scope(s) and preparing Statement(s) of Work sufficient for use in a competitive procurement.

**Compensation Procedures**

Compensation shall be made for work done by submitting invoices. Invoices shall be submitted on a monthly basis. These invoices shall state the number of labor hours that have been expended. Invoices shall be delivered to Ms. Margaret Sims for review and Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005. Compensation for travel shall be submitted by travel voucher consistent with federal travel regulation and EAC requirements.

**Termination**

This consultant contract can be terminated without cause in advance of the current end date by two weeks' notice in writing by either of the parties.

**Estimated Project Timetable.**

Deliverable	Due Date
Project work plan	10 days after contract award
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Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

November 8, 2005

Ms. Tova Wang  
201 West 74<sup>th</sup> Street, Apt. 11F  
New York, NY 10023

Dear Ms. Wang:

Enclosed is a signed personal services contract (EAC 05-66) in the amount for the provision of services to the U.S. Election Assistance Commission (EAC) in researching and developing a plan for a voter fraud and intimidation study. On or about September 1, 2005, an EAC employee communicated to you that EAC agreed to enter this personal services agreement with you. You began work based upon this notice of award. Despite the fact that the agreement was entered and communicated by an unauthorized person, EAC has reviewed the contract and concluded that ratification of this agreement is appropriate. EAC has ratified the agreement made with you on September 1, 2005. EAC has also received your first invoice for the period September 1 through September 30. That invoice will be reviewed and placed in line for payment.

To acknowledge receipt of this contract, please countersign and date below and return one copy of this letter to the attention of Nicole Mortellito.

We appreciate your work on these important efforts.

Sincerely,

Gracia Hillman  
Chair

  
\_\_\_\_\_  
Tova Wang

# **Comm. DeGregorio Files**

027929

**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

027930



# 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

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. 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

Dave Andersen  
Graduate Assistant

John Harris  
Graduate Assistant  
The Eagleton Institute of Politics

Donald Linky  
Senior Policy Fellow  
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**

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.

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

## **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.

**REVISED FINAL D R A F T**  
**For review by the EAC's Advisory Boards**

- 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.

*What about  
Indiana  
case?*

## **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.

- 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."

*Carter-Baker  
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Comments  
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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>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.

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South Carolina	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>aa</sup>	Address & Registration
South Dakota	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>aa</sup>	Affidavit
Tennessee	Provide ID	Provide ID <sup>c</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>	60.9 %		

**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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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.

*Not true!*

**Developments since 2004**

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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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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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with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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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

027964

# 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.

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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.

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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>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.

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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	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

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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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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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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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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

**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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# 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.

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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.

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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 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.

- 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^^	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.

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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	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



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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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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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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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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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with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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**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

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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.

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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.



## 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.)

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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? *Not effectively answered*
2. How did this vary between states that had previously had some form of provisional ballot and those that did not? *Hard to determine since no direct prep evidence presented*
3. How did litigation affect implementation? *Litigation only state 1/19*
4. How effective was provisional voting in enfranchising qualified voters? *No definitive answer*
5. Did state and local processes provide for consistent counting of provisional ballots? *No - variation*
6. Did local election officials have a clear understanding of how to implement provisional voting? *No credible evidence*

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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>

<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.

*note*  
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:

<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.

***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

<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(l). 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.

## **FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

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.

## FINAL DRAFT

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 (UNA)

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>.



## 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>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>Table 2 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 <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.

## 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		
<b>4</b>	<b>14</b>	<b>14</b>	<b>10</b>	<b>9</b>

\* 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>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.

FY!  
DeGregorio



U. S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF THE EXECUTIVE DIRECTOR  
1225 New York Avenue, NW, Suite 1100  
Washington, DC. 20005

June 15, 2006

John Weingart, Associate Director  
Eagleton Institute of Politics  
Rutgers University  
191 Ryders Lane  
New Brunswick NJ 08901-8557

Dear Mr. Weingart:

During a recent briefing by staff, the EAC discussed and reviewed possible next steps with the provisional voting and voter identification studies as well as the Eagleton contract which is scheduled to conclude on June 30, 2006.

We were in agreement that Eagleton's work on the EAC contract should conclude, as scheduled, by June 30, 2006. In preparation for this conclusion, the EAC requests that the comments and suggestions which were noted during the EAC's recent Board of Advisors and Standards Boards meeting (and were described in Mr. O'Neil's June 8, 2006 letter to Chairman DeGregorio) be included in the final draft report on provisional voting which Eagleton will deliver to the EAC on or about June 30, 2006. The Commissioners have determined that they will take this final draft report and, from it, may develop guidance and best practice recommendations that will be presented to the Board of Advisors and Standards Boards for further review.

The EAC Commissioners have also 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.

We look forward to receiving these reports. On behalf of the EAC thank you for the considerable time and energy which the Eagleton/Moritz team has devoted to these critical election issues.

Sincerely,

Thomas R. Wilkey

028064



## EAGLETON INSTITUTE OF POLITICS

Paul S. DeGregorio  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
Fax: (202) 566-3127

June 8, 2006

Dear Chairman DeGregorio:

Karen Lynn-Dyson relayed the Commission's decision in your meeting of June 1 to take more time to consider how to proceed with the delivery of EAC research reports on provisional voting and voter identification.

The Eagleton-Moritz research team, of course, encourages the Commission's thoughtful consideration of the two reports, but we are mindful of the need to deliver revised documents that respond to the Commission's comments by the close of our contract on June 30<sup>th</sup>. We believe that if we receive the Commission's final comments on the Provisional Voting report by June 19 we will be able to complete any additional work that the Commission might request and incorporate the results in our final reports before the end of the contract period.

Based on suggestions raised at the meetings, we already plan to supplement the Provisional Voting report with some brief, additional information about the influence of the fail-safe ballot provisions of the National Voting Rights Act on the experience with provisional voting in 2004.

We understand that the Commission must submit the final draft Voter ID report to the same review process by your advisory boards as was followed with the Provisional Voting paper. We understand that step is a prerequisite for wider release. We would appreciate your advice on how to handle this review, given the rapidly approaching end of our contract.

We hope the commission will use both 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 promptly 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 meetings of 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 on 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.

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Tel: [REDACTED]  
Fax: [REDACTED]

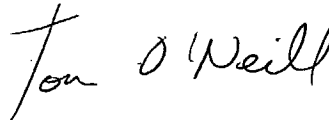
THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**

E: [REDACTED]  
W: [REDACTED]

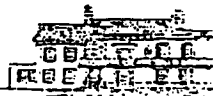
The information in the reports can improve the policy process by raising the level of debate over increasingly volatile issues related to election administration. We believe our reports will prove useful to the states as they complete preparations for the 2006 elections. Moreover, the elections community is aware of this work, and awaits the analysis and conclusions.

We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

A handwritten signature in cursive script that reads "Tom O'Neill". The signature is written in dark ink and is positioned above the typed name.

Thomas M. O'Neill  
Project Director



EAGLETON INSTITUTE OF POLITICS

FAX COVER SHEET

Date: 6/8/06

To: Paul S De Gregorio

Fax Number: 202-566-3127

Phone Number: \_\_\_\_\_

Total Number of Pages (including cover sheet): 3

Comments:

*Conn TW  
JL JTH  
MLD*

From: John Weingart X 290

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## EAGLETON INSTITUTE OF POLITICS

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Paul S. DeGregorio  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
\* Fax: (202) 566-3127

June 8, 2006

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191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

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THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**

E-mail: [REDACTED]  
Web: [REDACTED]

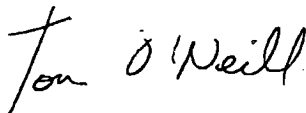
June 8, 2006 letter to Chairman DeGregorio from Thomas O'Neill

page 2

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We look forward to working with you to conclude this research in a way that will serve the public interest.

Very truly yours,

A handwritten signature in black ink that reads "Tom O'Neill". The signature is written in a cursive, slightly slanted style.

Thomas M. O'Neill  
Project Director

028069

August 18, 2005

Dear Commissioners:

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

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

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

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

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

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

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"Nevertheless, DOJ seems likely to sign off on this [Arizona's proposition 200 implementing rules], given that they've take the position - quite clearly an erroneous one, in my view - that voters need not even be given a provisional ballot if they lack ID." (Arizona Voter ID, July 18, 2005).

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

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

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

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

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

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

Hans A. von Spakovsky  
Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

028072

August 19, 2005

Hans:

I'm currently at the Seattle airport awaiting a return flight to D.C., so I apologize if my response below is somewhat incomplete. I think the issue you raise certainly deserves our full consideration, so I will look forward to additional responses and dialogue from others included in this distribution list.

A couple of quick points in response to your concerns (and I am speaking for myself below, and not for the entire commission):

- (1) The RFP that was issued by the EAC pertaining to the research on provisional voting and voter ID requirements was widely advertised (as all our RFP's are). We did so because we wanted to receive a wide range of possible contractors to conduct this important research. This was a competitive RFP process which, if my memory serves me correct, produced a good number of responses from interested entities.
- (2) Carol Paquette assembled a review panel (I'm not sure how many persons were involved in the review panel) to score the responses to this RFP...the submission by the Eagleton Institute included, as a part of their proposal, the Moritz School of Law at Ohio State University as a partner in conducting the legal research required for Eagleton to provide a final report (due in October) to the EAC. The review panel scored the Eagleton submission as best, considering a variety of factors.
- (3) The lead entity in this project is the Eagleton Institute. While the project manager's name from Eagleton escapes me right now, the lead from Moritz is not Dan Tokagi, but Ned Foley, who directs the election law section (or something to that effect) at Moritz. Certainly it is true that Professor Tokagi is contributing to the work product being assemble by Moritz, which consists primarily of reviewing election and administrative codes from all 50 states to ascertain how each state deals with provisional voting and voter ID requirements.
- (4) As is the case with all federal contractors, both Eagleton Institute and Moritz are contractually obligated to produce objective, sound and unbiased research and analysis on this project. While it is certainly prudent to consider the potential bias of any prospective contractor(s), after receiving the recommendation from the review panel and Carol Paquette (at the time, the acting EAC Executive Director), we unanimously agreed among the commissioners that the recommendation was worthy of support. At the time, we were aware, for example, that the Eagleton Institute had been involved last year in some litigation involving provisional ballots. We were also aware, as you point out, of Professor Tokagi's personal views regarding the issue of voter ID and provisional voting. Nevertheless, there was unanimous agreement in supporting the staff (and review panel) recommendation to move forward with the proposal submitted by Eagleton Institute.
- (5) Finally, to ensure that the final workproduct from both Eagleton and Moritz is objective and representative of all view points on these important issues, Eagleton proposed early in the process -- and we enthusiastically agreed -- to the formation of a balanced peer review panel which will review the work, on an on-going basis, of Eagleton and Moritz. All EAC commissioners have had an opportunity to provide names to Eagleton to ensure appropriate political balance on this peer review panel and Eagleton has been responsive to our various suggestions.

By way of summary, let me say that I believe we have an obligation to closely scrutinize the conduct of all of our federal contractors. If things come to light that bring into question the

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objectivity of any of our contractors, I believe the EAC ought to conduct its due diligence and deal with such matters accordingly, including the possibility of contract termination.

I would be happy to conduct such due diligence with regard to this particular contract. However, I must say, with all due respect, that I do not think any breach has occurred, either by Eagleton or Moritz, which would necessitate termination of this contract. I think appropriate checks and balances have been accounted for in this contract, and I believe these checks and balances will ensure an objective and sound final product from Eagleton.

I welcome your continued feedback, Hans.

Kindest regards,

RAY MARTINEZ III  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W., Suite 1100  
Washington, D.C. 20005

028074

August 19, 2005

To Gracia, Ray, Donetta, Tom, Julie, Karen

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

028075



from congressional 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.

**Paul DeGregorio**

Vice 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

August 19, 2005

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 insitutional 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.

028077

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  
1225 New York Avenue, N.W., Suite 1100  
Washington, D.C. 20005

(202) 566-3100 (W)  
(202) 566-3127 (FAX)  
[www.eac.gov](http://www.eac.gov)



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



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.

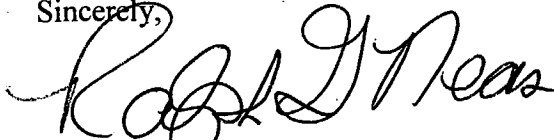
We know that voter fraud and intimidation occur— we've seen the long lines, the erroneous purges, the misleading flyers and phone calls. And yet there seems to be little attention to these matters on the state and federal level.

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

028081

TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 04:55  
NAME :  
FAX : 2025661389  
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SER.# : XXXXXXXXXXXX

DATE, TIME 10/20 04:54  
FAX NO./NAME 92281264  
DURATION 00:01:06  
PAGE(S) 04  
RESULT OK  
MODE STANDARD  
ECM



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Senate Majority Leader Bill Frist FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress DATE: October 20, 2006  
FAX NUMBER: (202) 228-1264 TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RE:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

023032



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Senate Majority Leader Bill Frist	Paul DeGregorio, Chairman
COMPANY:	DATE:
U.S. Congress	October 20, 2006
FAX NUMBER:	TOTAL NO. OF PAGES, INCLUDING COVER:
(202) 228-1264	4
SENDER'S PHONE NUMBER:	
(202) 566-3106	
RE:	

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.



TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 05:04  
NAME :  
FAX : 2025661389  
TEL :  
SER.# : XXXXXXXXXXX

DATE, TIME : 10/20 05:03  
FAX NO./NAME : 92255144  
DURATION : 00:00:41  
PAGE(S) : 04  
RESULT : OK  
MODE : STANDARD  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Rep. Vernon Ehlers, House Administration  
FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress  
DATE: October 20, 2006  
FAX NUMBER: (202) 225-5144  
TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RT:

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NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028084



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:

Rep. Vernon Ehlers, House  
Administration

FROM:

Paul DeGregorio, Chairman

COMPANY:

U.S. Congress

DATE:

October 20, 2006

FAX NUMBER:

(202) 225-5144

TOTAL NO. OF PAGES, INCLUDING COVER:

4

SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

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NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 04:57  
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DURATION 00:01:06  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Senator Chris Dodd, Ranking Member, Senate Rules and Administration  
FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress DATE: October 20, 2006  
FAX NUMBER: (202) 224-1083 TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RE:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028036



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

Senator Chris Dodd, Ranking  
Member, Senate Rules and  
Administration

Paul DeGregorio, Chairman

COMPANY:

DATE:

U.S. Congress

October 20, 2006

FAX NUMBER:

TOTAL NO. OF PAGES, INCLUDING COVER:

(202) 224-1083

4

SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

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NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 04:58  
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MODE STANDARD  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Senate Minority Leader Harry Reid FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress DATE: October 20, 2006  
FAX NUMBER: (202) 224-7327 TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RE:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028088



U. S. ELECTION ASSISTANCE COMMISSION

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FACSIMILE TRANSMITTAL SHEET

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TO:

FROM:

Senate Minority Leader Harry Reid

Paul DeGregorio, Chairman

COMPANY:

DATE:

U.S. Congress

October 20, 2006

FAX NUMBER:

TOTAL NO. OF PAGES, INCLUDING COVER:

(202) 224-7327

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SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

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NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 04:59  
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RESULT OK  
MODE STANDARD  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: John Boehner, House Majority Leader  
FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress  
DATE: October 20, 2006  
FAX NUMBER: (202) 225-0704  
TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RE:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028090



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

John Boehner, House Majority  
Leader

Paul DeGregorio, Chairman

COMPANY:

DATE:

U.S. Congress

October 20, 2006

FAX NUMBER:

TOTAL NO. OF PAGES, INCLUDING COVER:

(202) 225-0704

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SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.



TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 05:01  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: FROM:

Rep. Juanita Millender-McDonald,  
Ranking Member, House  
Administration

Paul DeGregorio, Chairman

COMPANY: DATE:

U.S. Congress

October 20, 2006

FAX NUMBER: TOTAL NO. OF PAGES, INCLUDING COVER:

(202) 225-7926

4

SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028092



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

Rep. Juanita Millender-McDonald,  
Ranking Member, House  
Administration

Paul DeGregorio, Chairman

COMPANY:

DATE:

U.S. Congress

October 20, 2006

FAX NUMBER:

TOTAL NO. OF PAGES, INCLUDING COVER:

(202) 225-7926

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SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

TRANSMISSION VERIFICATION REPORT

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DURATION 00:00:39  
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MODE STANDARD  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Nancy Pelosi, House Minority Leader  
FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress  
DATE: October 20, 2006  
FAX NUMBER: (202) 225-8259  
TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RE:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028094



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Nancy Pelosi, House Minority Leader  
FROM: Paul DeGregorio, Chairman  
COMPANY: U.S. Congress  
DATE: October 20, 2006  
FAX NUMBER: (202) 225-8259  
TOTAL NO. OF PAGES, INCLUDING COVER: 4  
SENDER'S PHONE NUMBER: (202) 566-3106  
RE:

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

TRANSMISSION VERIFICATION REPORT

TIME : 10/20/2006 05:03  
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DATE, TIME 10/20 05:02  
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DURATION 00:00:31  
PAGE(S) 04  
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MODE STANDARD  
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U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO: Senator Trent Lott, Chair, Senate  
Rules and Administration

FROM: Paul DeGregorio, Chairman

COMPANY: U.S. Congress

DATE: October 20, 2006

FAX NUMBER: (202) 224-2262

TOTAL NO. OF PAGES, INCLUDING COVER: 4

SENDER'S PHONE NUMBER: (202) 566-3106

RE:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

028096



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Senator Trent Lott, Chair, Senate Rules and Administration	Paul DeGregorio, Chairman
COMPANY:	DATE:
U.S. Congress	October 20, 2006
FAX NUMBER:	TOTAL NO. OF PAGES, INCLUDING COVER:
(202) 224-2262	4
SENDER'S PHONE NUMBER:	
(202) 566-3106	
RE:	

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.



U.S. ELECTION ASSISTANCE COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:

FROM:

Senator Trent Lott, Chair, Senate  
Rules and Administration

Paul DeGregorio, Chairman

COMPANY:

DATE:

U.S. Congress

October 20, 2006

FAX NUMBER:

TOTAL NO. OF PAGES, INCLUDING COVER:

(202) 224-2262

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SENDER'S PHONE NUMBER:

(202) 566-3106

RE:

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Please see the following letter from Ralph Neas, President of People for the American Way Foundation and the responding letter by the EAC. If you have any questions please feel free to contact the EAC @ (202)566-3100.

Karen Lynn-Dyson/EAC/GOV  
06/23/2005 02:34 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC  
bcc:

*July 12*  
*Before*  
*930-1030*  
*before (in phone)*

Subject Fw: Peer Review Group

Commissioners-

Enclosed please find a preliminary list of Peer Review Group members, whom Eagleton is considering for their Peer Review Group. Tom Wilkey will be bringing this item to you for discussion and input at Monday's Commissioner's meeting.

Eagleton envisions this Peer Review Group as the body that will review the draft analysis that it will prepare on provisional voting and on voter identification. The Group would also provide comment on the development of alternative approaches to provisional voting and voter identification which Eagleton will develop for the EAC.

I have included the e-mail from the Eagleton Project Director, Tom O'Neil, so that you could get a feel for his approach/philosophy to assembling the Group.

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/23/2005 02:25 PM -----



"Tom O'Neill"

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 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

028099



## PROPOSED MEMBERS OF PEER REVIEW GROUP

**R. Michael Alvarez, Ph.D.**  
 Professor of Political Science  
 California Institute of Technology

[REDACTED]  
 Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College; his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

**Deborah Goldberg, Ph.D**  
 Program Director, Democracy Program  
 Brennan Center for Justice at NYU School of Law  
 [REDACTED]  
 New York, NY 10013

Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

**Martha E. Kropf, Ph.D.**  
 Assistant Professor of Political Science  
 University of Missouri-Kansas City

Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

**Wade Henderson, Esq.**  
 Executive Director  
 Leadership Conference on Civil Rights  
 [REDACTED]

Washington, DC 20006

Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU.

**Kay Maxwell**  
 President  
 League of Women Voters of the U.S.  
 [REDACTED]

Washington, DC 20036-4508  
[REDACTED]

Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project.

**Tim Storey**  
Program Principal  
Legislative Management Program  
National Conference of State Legislatures

[REDACTED]  
Denver, CO 80230  
[REDACTED]

or

[REDACTED]  
Washington, D.C. 20001  
[REDACTED]

**Peter G. Verniero, Esq.**  
Counsel  
Sills, Cummis, Epstein and Gross, PC

[REDACTED]  
Newark, New Jersey 07102  
[REDACTED]

Verniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

4 E/O 2D 2R 2L 2S  
for new State Board.

- Overseas foundation
- other academics
- Gov. costs being



PROPOSED MEMBERS OF PEER REVIEW GROUP.doc

028102

**STATUS OF PEER REVIEW GROUP RECRUITMENT**

(As of August 17, 2005)

*Conrad*  
B **R. Michael Alvarez, Ph.D.** YES/CONFIRMED *Neutral*  
Professor of Political Science  
California Institute of Technology

B **Guy-Uriel Charles** YES *Liberal*  
Associate Professor, School of Law  
University of Minnesota  
[Redacted]

B **Brad Clark** NO *Conservative*  
Professor of Law  
George Washington University School of Law

B **Pamela Susan Karlan** YES *Left*  
Montgomery Professor of Public Interest Law  
Stanford Law School  
[Redacted]

CJ **Martha E. Kropf, Ph.D.** YES/CONFIRMED  
Assistant Professor of Political Science  
University of Missouri-Kansas City *NWPC info*  
[Redacted]

B **Daniel H. Lowenstein** YES *Left*  
Professor of Law  
UCLA  
[Redacted]

B **John F. Manning** *No* ~~NO RESPONSE~~  
Professor  
Harvard Law School

*Julie*  
**Tim Storey** YES/CONFIRMED *Neutral*  
Program Principal  
Legislative Management Program  
National Conference of State Legislatures

B **Peter G. Verniero, Esq.** YES/CONFIRMED *Mod GOP?*  
Counsel  
Sills, Cummis, Epstein and Gross, PC  
(Former NJ Attorney General and Supreme Court Justice)

*Tim O'Rourke* YES *Cons*

Karen Lynn-Dyson/EAC/GOV  
09/02/2005 05:42 PM

To Paul DeGregorio/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC  
bcc  
Subject Fw: New Peer Review Group Member

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 09/01/2005 05:41 PM -----



"Tom O'Neill"

[REDACTED]  
09/02/2005 04:48 PM

To tokaji.1@[REDACTED], ireed@[REDACTED],  
john.weingart@[REDACTED], toley.33@[REDACTED],  
rmandel@[REDACTED], rmandel@[REDACTED]  
cc klynndyson@eac.gov  
Subject New Peer Review Group Member

Tim O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University in Maryland, has agreed to serve on the Peer Review Committee.

Tom O'Neill

028104

**TIMOTHY G. O'ROURKE**  
 Dean of the Fulton School of Liberal Arts  
 Salisbury University

E-MAIL

In July 2002, Timothy G. O'Rourke became the Dean of the Fulton School of Liberal Arts at Salisbury University, a comprehensive public university with nearly 7,000 students located on Maryland's Eastern Shore. The largest of the university's four schools, the Fulton School has about 120 full-time faculty and more than 1,800 undergraduate and graduate majors in ten academic departments and accounts for more than two-fifths of the University's credit hour production.



In the seven years before his arrival at Salisbury, Dr. O'Rourke was at the University of Missouri-St. Louis, where he was the Teresa M. Fischer Professor in Citizenship Education, a position established in 1995 in order to promote the informed participation of youth in community and governmental affairs. The inaugural recipient of this professorship, Dr. O'Rourke held a joint appointment as Professor of Educational Leadership and Professor of Political Science. From 1998 to 2002, he served as Executive Director of Kids Voting Missouri, a program in which nearly 68,000 Missouri elementary and secondary students went to official polling sites and voted alongside their parents in the November 7, 2000 presidential election.

From 1992 to 1995, Dr. O'Rourke was professor and head of Political Science at Clemson University. Prior to that, Dr. O'Rourke was, for 14 years, a faculty member in the University of Virginia's Center for Public Service. From 1985 to 1992, Dr. O'Rourke served as the Executive Director of the Virginia Commission on the Bicentennial of the U.S. Constitution. Commission projects included the national opening of Montpelier, Madison's home (1987); the "Constitution Train" to Philadelphia to mark "Virginia Day" (1987); production of *Worth Fighting For*, an Emmy-Award-winning documentary on the ratification struggle in Virginia (1988); the celebration of the 200<sup>th</sup> anniversary of the first federal elections (1989); the Virginia visit of Hungarian President Árpád Göncz to mark the "Global Legacy of the Bill of Rights" (1990); and production of *What No Just Government Should Refuse*, an Emmy-nominated documentary on the writing of the Bill of Rights (1991). From 1983 through 1986, Dr. O'Rourke directed "The Virginia Court Days Forums," a series for Virginia public television featuring town meetings on constitutional issues.

Professor O'Rourke is the co-author of *State and Local Government: The Third Century of Federalism* (1988) and author of *The Impact of Reapportionment* (1980), named by *CHOICE* as one of the Outstanding Academic Books of 1980. His articles on the federal Voting Rights Act have appeared in such journals as the *Rutgers Law Journal*, the *Virginia Law Review* and the *Journal of Law & Politics*. He has testified before both U.S. House and Senate committees on various voting issues and has served as an expert witness in voting rights litigation. In addition, he has staffed electoral reform commissions, including the Virginia Beach Mayor's Committee for Reapportionment (1990) and the Charlottesville Citizens' Committee to Study Council Changes (1980-81). During 1996-97, he served as advisor to the St. Peters Charter Commission, which drafted a home rule charter for that city. Dr. O'Rourke's teaching interests include state politics, school law, and voting rights and representation. He is a *Phi Beta Kappa* graduate of the University of Pittsburgh (1970) and holds a Ph.D. in Political Science from Duke University (1977). In 2002, Dr. O'Rourke joined four others in the inaugural Class of Distinguished Alumni recognized by the Tyrone Area School District (PA). Dr. O'Rourke and his wife and family have five grown children and one grandchild and reside in Quantico, Maryland.

**Other Fulton Links:**

## Existing Research Analysis

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.

## EAC Voting Fraud-Voter Intimidation Preliminary Research

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- 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.



*Peer Review Group  
Summary of Comments  
To the Eagleton/Moritz Group  
Under Contract to Provide Research Assistance to the EAC*

*October 15, 2005*

The Peer Review Group (PRG) met by telephone conference on September 21. Those participating included: Michael Alvarez, John C. Harrison, Martha Kropf, Dan Lowenstein, Peter Verniero, Brad Smith, and Tim Storey. This summary also includes additional written remarks submitted by Martha Kropf and additional remarks from a follow-up phone call with Timothy O'Rourke. We are now addressing all the comments including, in some cases, returning to members of the group to seek further elaboration or clarification.

We encouraged the members of the PRG to comment about any aspect of the project. We furnished them with these materials before the meeting.

1. Survey of local (mainly county) officials conducted in June 2005.
2. State-by-state narrative of developments in provisional voting
3. Statistical Analysis of state provisional voting
4. Memorandum on Provisional Voting Litigation
5. Memorandum on Provisional Ballot Litigation by State
6. July Memorandum on Provisional Ballot Litigation by Issue

We suggested that PRG members rank our draft responses to each of the six key questions posed by the EAC along these lines:

- 1- Research supports conclusions well.
- 2- Research supports some conclusions. Specific questions are:
- 3- Research does not support conclusions. Major problems are:

On the Alternatives paper, we asked PRG members to list up to three items they found questionable in light of the research and their own knowledge of provisional voting and election administration and to give us their thoughts on alternative policies that we had no included.

General Suggestions

1. Make transparently clear the meaning of 'old' versus 'new' states. It is not enough to categorize the states as such, we need to determine why specific states were considered 'old' or 'new' (i.e. clarify what conditions were met by old states).

2. Be **clear** in our report about the **data that we were unable to obtain** and perhaps speculate on why that data was not available. (For example, do we have the documentation the state election boards gave the localities regarding counting practices? If not, why not? Indicate the states for which it was difficult to obtain data.

3. Prescribe less and **describe more** (tell what voters/administrators have done, not what they should have done or ought to do).

4. Questioned our assumption about public trust – How do we know that decreases in disputes/challenges signify an increase in public trust? We need to explain this assertion.

#### Specific Review by Area of Analysis/Document

##### **Response to Statistical Review:**

- Challenged our emphasis on the number of provisional ballots counted as a percentage of those cast as an indication of success of Provisional Voting. Suggested alternative relationships to consider (PB v. Turnout, PB v. Registered Voters, and PB v. Voting age Population).
- Wanted the inclusion of variation within states among counties (and geographical considerations).
- The report needs to address the quality and validity of the data used in the analysis.
- On Page 8, cautioned using the estimate of 280,000 disenfranchised voters who would have voted if outside precinct voting was permitted.

##### **Response to Question Four:**

- Remove the comments in the footnote (p. 1) that offers an alternative way of analyzing the question relating to the possible increase in voter participation as a result of provisional voting because the margin of error in the Census survey does not support a conclusion at this level of significance.
- Address the alternative explanation for why old states may enfranchise more voters than new states (i.e. Kropf 's Failsafe option).
- Include a statistical summary of the relationship between the length of time a state has had PV and the rate at which votes are counted.

##### **Response to Question Five:**

- Is it possible to draw any conclusions about the local differences within and among states broken down by county (presumably 20 states worth)?

- Clarify what is meant by “design” and say how many states have/had provisional ballots that are designed differently and look different. Why is design important?
- Page 17 indicates that states with statewide voter databases end up validating fewer PVs. This is important & should be addressed in more detail.

#### **Response to Question Six:**

- On the usefulness of instructions, 98% said the instructions were useful. Make it clear that this represents 98% of the officials who got instruction.
- Is the passive voice the best means to communicate this information (for ex. "Second, objectively how well did the process appear to be managed?")

#### **Response to State Narratives:**

- When in doubt about whether we have data to support a sentence it is important to be careful about the language we use (say ‘doing XYZ would have revealed’ as opposed to ‘most of what we know about XYZ revealed’ ...)
- Clarify for the readers what is meant by "provisional vote/total vote". Does that mean provisional votes cast? Counted? Make it clear right at the beginning of every document?
- Footnote states that do not list poll sites or tell people where to vote with the fact that many cities/counties do have a poll finder.

#### **Election Official Survey**

- Clarify how we determined who to include in the sample and how we developed the questions in the survey (was a focus group an initial step?) Why were 3,800 election officials deemed eligible to participate (out of how many? 5,000 or so?)
- Clarify old and new states on pg. 2 in National Survey. Comment on how to assess fraud in provisional voting? What is the relationship between PV and turnout?
- Explore more issues about citizenship (18% non-citizen voting in CA)?
- Appendix A says survey was random, but it’s not. How was the data weighted for small, medium and large counties, and for other issues? Clarify this in the report.

- Why doesn't the total of new and old states equal 50 (25 and 18) and why does the National Survey of Election Officials have different numbers? Is FL an 'old' state?
- Are the New England states underrepresented in the survey? If so, why?
- Report should offer more information about the response rate.

#### **Alternatives Document**

- The importance of clarity in state processes for both administrators and voters needs to be better articulated.  
(Better training of poll workers, clarity whether failure to check boxes disqualifies voters, access to better info. at polling locations)
- Cautions the use of definitive statements (such as A-3, perhaps say "This raises the question of...").
- Have other EAC Guidelines been tested in court yet?
- On page 3: the 'tracking number' in # 6 is not feasible. Also, "the information" in # 12 should be changed to "the website and 800 numbers" for clarification.
- Page 6, there were disagreements about # 1 and # 2 of options in Sec. F regarding the installation of a separate body to rule on PV for the integrity process; a motion was made to get rid of them.
- Page 6, Sec. E option # 1 should be eliminated or clarified
- Add to Sec. F a '# 5' requiring states to provide detailed public info. on PV



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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**  
**September 2005**

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

September 14, 2005

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

028112

## 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 September 1 through September 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.

We focused in September on refining our Provisional Voting research. This refinement was necessary to prepare a strong final analysis paper and develop alternative approaches to Provisional Voting based on the analysis. An important part of this refinement involved reconciling sometimes conflicting data on Provisional Voting from different sources, including the Election Day Study, which finally became available in September. With a clearer understanding of our data, we began the critical work of selecting alternatives to recommend to the EAC as guidance or best practices responsive to both our research and the needs of the Commission.

Three meetings this month helped us accomplish the necessary refinement. We briefed the EAC on our work on September 6, held the first meeting of the Peer Review Group (PRG) on September 21, and gained the benefit of the EAC's reaction to the September 6 briefing in a conference call on September 30.

The completion of our work on Provisional Voting has been delayed by the time needed to absorb and incorporate the findings of the EAC Election Day Study, to recruit and receive the comments of the PRG, and to receive the Commission's comments on the September 6 briefing. The schedule called for the release of the Election Day Study last spring, the submission of the Preliminary Guidance Document to the EAC's advisory boards in mid-September, and a public hearing on the Guidance Document in late October. We now plan to submit to the EAC a final draft of our report, a preliminary guidance document, and draft

best practices before the end of October. And we understand that after review of those materials, the EAC will decide whether to issue a guidance document or recommend best practices. Projecting a late November date for those decisions seems reasonable. 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 January.

While we have made a good start on the Voter ID sections of our research, most time and resources this month were dedicated to resolving issues involved in Provisional Voting.

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.

## **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 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 analysis of the information, data, and survey results concerning Provisional Voting was completed in September, on schedule. We are now revising it in response to comments by the Peer Review Group (PRG). We are also revising the alternatives document to reflect the critique of the PRG and the guidance from the EAC in response to the September 6 briefing.

### **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.

### PROVISIONAL VOTING STATISTICAL ANALYSIS

**Description:** Throughout September the Eagleton research team revised and clarified 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:** In response to comments from the PRG, we have clarified and sharpened the presentation on the methods used and results achieved in the statistical analysis. We have double checked the classification of variables upon which the study is based and reconciled differences in various areas of the overall study. This effort is nearing completion.

**Challenges:** The difficulties encountered have been a result of communication delays and time constraints. Overall, these are not problems or hindrances, but simply slow down the process.

**Work Plan:** In mid-October we aim to complete a final revision of the statistical analysis and a full reconciliation of all data within the study.

### **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.

### **Peer Review Group**

Most members of the PRG met by telephone conference on September 21 to comment on all the research described above. Participating in the meeting were Michael Alvarez, Martha Kropf, Dan Lowenstein, Peter Verniero, Brad Smith, and Tim Storey. Timothy O'Rourke contributed his comments separately. The group provided a detailed critique of our approach, methods, and conclusions, and we are now revising each document in response to the comments and suggestions. It praised the quality of the work and the rigor of much of the analysis. A summary of the suggestions from the members of the PRG is attached to this report.

### **Challenges and Work Plan**

Making arrangements for review of drafts by the PRG and by the EAC has taken longer than anticipated by the Work Plan. The schedule called for all research and analysis to have been completed and incorporated into a Draft Preliminary Guidance Document by mid September. The review process by the EAC and PRG took longer than contemplated by the Work Plan. And we now understand that the EAC will make a separate decision --that will require additional time-- whether to issue a Guidance Document or recommendations for best practices. It has not, therefore, been possible to schedule a public hearing or arrange for review of our work by the EAC's advisory boards, as called for in the Work Plan. We now aim to complete our reports and recommendations for guidance by the end of October, and to then await a response from the EAC before scheduling submission to the advisory boards or making arrangements for a hearing.

## 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 will begin now.

### 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. We understand that the EAC has issued a

research contract that will focus on vote fraud and vote suppression. Our research in this area will be limited to developing an understanding of the tradeoffs between ballot security and access to the ballot. We have completed the basic database on voter identification issues has been completed, and the next key step will be 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 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 utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

**Challenges:** The analysis of these data has been postponed until the data reconciliation of Provisional Voting is complete. The main challenge now is an issue of time management. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID has been temporarily placed on hold.

**Work Plan:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early November.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

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

**Progress:** The research team held its first conference call with PRG members on September 19, 2005. The research team will hold a workshop meeting on October 19, 2005 to address the PRG's comments.

**Challenges:** To date we still have not heard back from two PRG Members.

**Projections:** Revisions and clarifications to our reports on Provisional Voting will be resolved by the end of October. We will need to schedule a second conference call to review our research with regard to Voter Identification Requirements in late November. As noted earlier, a summary of the comments we have received from the PRG is attached to this report.

### **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.

**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. 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 helped 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 September 1- September 30, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

Then discuss

**Job Description**

**U.S. Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

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The consultant must have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

This consultant, whose contract would run for the period June-November, 2005, would be responsible for:

Research

- Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation;
- Developing a project scope of work and a project work plan related to voter fraud and intimidation;
- Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

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From this initial research and exploration of these topics the consultant may be retained to help oversee research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

EAC's consultant fees are competitive and are awarded based on the candidate's relevant background and experience.

**STATUS OF PEER REVIEW GROUP RECRUITMENT**

(As of August 17, 2005)

**R. Michael Alvarez, Ph.D.**

Professor of Political Science  
California Institute of Technology  
Name not found on opensecrets.org or fec.gov  
Professional bio attached

*Conny McCormick*

**YES/CONFIRMED**

*Dew.  
(not because)  
Jennifer Collins-Foley  
cell (540) 379-9974*

**Guy-Uriel Charles**

Associate Professor, School of Law  
University of Minnesota  
612-626-9154  
Name not found on opensecrets.org or fec.gov  
Bio attached

**YES**

**Brad Clark**

Professor of Law  
George Washington University School of Law  
Name not found in opensecrets.org or fec.gov  
Bio attached

**NO**

**Pamela Susan Karlan**

Montgomery Professor of Public Interest Law  
Stanford Law School  
650-725-4851  
Name not found on opensecrets.org or fec.gov  
Bio attached

**YES**

**Martha E. Kropf, Ph.D.**

Assistant Professor of Political Science  
University of Missouri-Kansas City  
816-235-5948; KropfM@umkc.edu  
Name not found on opensecrets.org or fec.gov  
CV attached (member of NWPC – issue info attached)

**YES/CONFIRMED**

**Daniel H. Lowenstein**

Professor of Law  
UCLA  
310-825-4841  
Name not found on opensecrets.org or fec.gov  
Bio attached

**YES**

**John F. Manning**

Professor  
Harvard Law School  
Contributed \$500 to NRCC in 2002 as per opensecrets.org and fec.gov  
Bio attached

**NO RESPONSE**

*Robert  
Montjoy - Poli Sci Univ of MO*



*Bipartisan  
Org. bio requested*

**Tim Storey**  
Program Principal  
Legislative Management Program  
National Conference of State Legislatures  
Possible contribution of \$250 to Kerry camp. In 2004 (not sure if same person)  
No bio found

**YES/CONFIRMED**

*NCSC for Bio*  
*NATALEE O'Donnell*  
*Leg. Mgmt Program*  
*303 364-7700*

**Peter G. Verniero, Esq.**  
Counsel  
Sills, Cummis, Epstein and Gross, PC  
(Former NJ Attorney General and Supreme Court Justice)  
Name not found on opensecrets.org or fec.gov  
Bio attached

**YES/CONFIRMED**

Peer Review Task - Peer. Obtain  
ID REQUIREMENTS

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**Biographical Sketch**

R. Michael Alvarez, Ph.D.  
Professor of Political Science  
Division of the Humanities and Social Sciences

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

R. Michael Alvarez was selected by *Scientific American* magazine to be on the 2004 "Scientific American 50" for his outstanding scientific and technological contributions to help improve the U.S. voting system. He has taught political science at Caltech since December 1992. He received his B.A. in political science in 1986 from Carleton College; he received his M.A. and Ph.D. from Duke University in 1990 and 1992, respectively. Alvarez was named an Associate Professor in April 1995, received tenure in June 1997, and was promoted to Professor in March 2002. Alvarez has focused most of his research and teaching on the study of electoral politics in the United States. His first book, *Information and Elections*, was published in the spring of 1997: This project examined the question of how much American voters know about presidential candidates and how they obtain that information. His second book, *Hard Choices, Easy Answers* (with John Brehm), is a study of American public opinion about divisive social and political issues. His recent book (published January 2004), *Point, Click, and Vote: The Future of Internet Voting* (with Thad E. Hall), published by Brookings Institution Press, examines the controversies swirling around the Internet voting in the United States. He has also published many articles on electoral behavior and public opinion in the United States and other advanced industrial democratic nations.

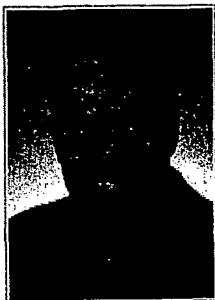
Alvarez has received a number of honors and grants for his work. He was named the "Emerging Scholar" by the American Political Science Association's Voting Behavior and Public Opinion Section in 2002. He was a John M. Olin Faculty Fellow (1994-95) as well as a John Randolph Haynes and Dora Haynes Faculty Fellow (1994, 1997, 1999, 2002). Alvarez received the Sprague Award with John Brehm for their work on public opinion, and the Durr Award with Jonathan Nagler for their work on modeling elections. Also, Alvarez has received financial support for his research from the National Science Foundation, The IBM Corporation, the Carnegie Corporation of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals: *American Journal of Political Science*, *American Politics Quarterly*, *Election Law Journal*, *Political Behavior*, *The Journal of Politics* and *Political Research Quarterly*. He was the editor of *The Political Methodologist*, 1993-96.

Professor Alvarez is Co-Director of the Caltech-MIT Voting Technology Project, researching technological solutions to electoral problems, and is the Principal Investigator of the "Secure Electronic Registration and Voting Experiment" Evaluation. He has been an expert witness in a series of recent court cases, including California's defense of the blanket primary (*California Democratic Party v. Jones*), *Bradley v. Compton*, and *Cano v. Davis*. He has testified before a number of organizations, including the U.S. Senate. He was an outside consultant for Knight Ridder on their 2000 Hispanic Voter Poll, and in 2004 is a consultant to Greenberg, Quinlan, Rosner Research Inc. in their research on the Hispanic electorate. Alvarez is a frequent guest on Pasadena's National Public Radio affiliate, KPCC-FM, and writes opinion pieces for local newspapers. He has been interviewed for National Public Radio, Jim Lehrer's NewsHour, CNN, ABC, NBC News, and for many state, national and international newspapers.

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THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL  
WASHINGTON DC



**Bradford R. Clark**  
Professor of Law

Email: [REDACTED]

Telephone: [REDACTED]

**Education:** B.A., Florida State University; J.D., Columbia University

**Biographical sketch:** Before coming to the Law School in 1993, Professor Clark spent several years practicing law in the Washington, D.C., office of Gibson, Dunn & Crutcher, where he specialized in appellate litigation. Previously, Professor Clark served as an attorney adviser in the Department of Justice's Office of Legal Counsel, where he provided legal advice to the president, the attorney general, and the heads of executive departments. Professor Clark also served as a law clerk to Judge Robert H. Bork of the U.S. Court of Appeals for the D.C. Circuit and to Supreme Court Justice Antonin Scalia. Professor Clark teaches and writes in the areas of civil procedure, constitutional law, and federal courts.

**Current Semester Courses:** Civil Procedure I , Law Review

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Stanford Law School



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FACULTY

**Pamela S. Karlan**

*Kenneth and Harle Montgomery Professor of Public Interest Law*

[karlan@stanford.edu](mailto:karlan@stanford.edu)  
650/725-4851

**Education**

- BA, Yale, 1980
- MA, Yale, 1984
- JD, Yale, 1984

**Employment History**

- Clerk to Judge Abraham D. Sofaer, U.S. District Court, Southern District of New York, 1984-85; to Justice Harry A. Blackmun, U.S. Supreme Court, 1985-86
- Assistant Counsel, NAACP Legal Defense & Educational Fund, 1986-88; Cooperating Attorney, 1988-<sup>Nixon</sup>
- Associate Professor, U. of Virginia, 1988-93; Professor, 1994-98
- Visiting associate Professor, Yale, 1992; NYU 1993
- Visiting Professor, Harvard, 1994-95; Stanford 1996; U. of Virginia, 2002
- Joined the Stanford faculty in 1998; Academic Associate Dean, 1999-2000; Montgomery Professor, 1999-
- Commissioner, California State Fair Political Practices Commission, 2003—

**Professional Affiliations**

- Member, American Law Institute
- Cooperating Attorney, NAACP Legal Defense & Educational Fund
- Commissioner, California Fair Political Practices Commission

**Honors and Awards**

- University of Virginia All-University Outstanding Teaching Award, 1995-96
- State Council on Higher Education in Virginia

**Outstanding Faculty Award, 1997**

- The Public Sector 45, *American Lawyer*, 199
- John Bingham Hurlbut Award for Excellence Teaching, Stanford, 2002

**Principal Subjects**

- Constitutional law
- Constitutional litigation
- Civil rights and antidiscrimination law
- Legal regulation of the political process
- The Supreme Court

**Courses**

- Constitutional Law I
- Constitutional Litigation
- Supreme Court Litigation Clinic
- Supreme Court Term

**Curriculum Vitae**

**Selected Publications**

- The Law of Democracy: Legal Structure of th Political Process, rev. 2d. ed. 2002 (with Samuel Issacharoff and Richard H. Pildes)
- Civil Rights Actions: Enforcing the Constitutic 2000 (with John C. Jeffries, Jr., Peter W. Low and George A. Rutherglen)
- "Easing the Spring: Strict Scrutiny and Affirmative Action After the Redistricting Cases," 43 Wm. & Mary L. Rev. 1569 (2002) (Cutler Lecture)

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028129

# Dr. Martha E. Kropf

Department of Political Science  
University of Missouri-Kansas City

- Appointment** University of Missouri-Kansas City, Assistant Professor of Political Science  
(Research Methods, Urban Politics, American Government, Political Behavior)  
August 1999-present.
- Education**
- American University**  
Ph.D., Political Science, May 1998  
Fields: American Government, Policy Analysis, and Public Economics  
Dissertation: "Viewers Like You: Community Norms and Contributions to Public Broadcasting"
- Kansas State University**  
B.A. in Journalism and Political Science  
Graduated in May 1991, Summa Cum Laude, Phi Beta Kappa
- Inter-University Consortium for Political and Social Research**, Statistics Classes,  
June/July 2000. Classes: "Maximum Likelihood Estimation" and "Scaling and Dimensional  
Analysis"
- Past Employment** Project Coordinator, University of Maryland Survey Research Center  
May 1997-July 1999
- Worked with all aspects of survey research, specializing in questionnaire design
  - Worked directly with clients to design survey instruments
  - Ensured that surveys were completed on schedule and within budget
  - Coordinated projects for clients such as the Harvard School of Public Health, the Maryland Department of Public Health, and the Prince George's County, MD Public Schools
- Classes Taught**
- PS 302: Political Research and Analysis  
PS 305: Survey Research and Analysis (Service Learning class)  
PS 309: Public Opinion and Voting Behavior  
PS 315: Public Policy  
PS 438: Urban Politics  
PS 505: Scope and Methods of Political Science (graduate level methodology)  
PS 524: Urban Politics (graduate level)
- Publications**
- Articles**
- Kropf, Martha and Johnny Blair. "Testing Theories of Survey Cooperation: Incentives, Self-Interest and Norms of Cooperation." Forthcoming. *Evaluation Review*.
- Knack, Stephen and Martha Kropf. 2003. "Roll Off at the Top of the Ballot: Intentional Undervoting in American Presidential Elections." *Politics & Policy* 31(4): 575-594.
- Kropf, Martha and Stephen Knack. 2003. "Viewers Like You: Community Norms and Contributions to Public Broadcasting." *Political Research Quarterly* 56(2): 187-195.
- Knack, Stephen and Martha Kropf. 2003. "Invalidated Ballots in the 1996 Presidential Election: A County-Level Analysis." *Journal of Politics*. 65(3): 881-897.

Articles, continued

- Kropf, Martha, E. Terrence Jones, Matt McLaughlin and Dale Neuman. 2003. "The 2002 Missouri Senate Race." *PS Online*, <http://www.apsanet.org/PS/july03/kropf.pdf>. Abstract reprinted in *PS: Political Science and Politics*, July 2003: 407.
- Knack, Stephen and Martha Kropf. 2002. "Who Uses Inferior Voting Technology?" *PS: Political Science and Politics*. September: 541-548.
- Kropf, Martha E. and John A. Boiney. 2001. "The Electoral Glass Ceiling: Gender, Viability and the News in U.S. Senate Campaigns." *Women & Politics*, Vol. 23(1/2): 81-105; reprinted in *Women and Congress: Running, Winning and Ruling*, edited by Karen O'Connor, 2001, New York: The Haworth Press, pp. 79-103.
- Jones, Terrence E., Martha Kropf, Dale Neuman, Maureen Gilbride and Chris Elkin "The Presidential Primaries in Missouri." *PS Online*, <http://www.apsanet.org/PS/june01/jones.cfm> June 2001. Abstract reprinted in *PS: Political Science and Politics*, June 2001, p.271.
- Kropf, Martha E., Anthony Simones, E. Terrence Jones, Dale Neuman, Allison Hayes and Maureen Gilbride Mears). "The 2000 Missouri Senate Race." *PS Online*, <http://www.apsanet.org/PS/june01/kropf.cfm> June 2001. Abstract reprinted in *PS: Political Science and Politics*, September 2001, p. 600.
- Knack, Stephen and Martha Kropf. 1998. "For Shame! The Effect of the Community Cooperation Context on the Probability of Voting." *Political Psychology* 1998(19): 585-599.
- Dolan, Julie, Marni Ezra, Martha Kropf and Karen O'Connor. 1997. "The Future of Our Discipline: The Status of Doctoral Students in Political Science." *PS: Political Science and Politics* 1997(XXX): 751-756.
- Blendon, Robert J., John T. Young, Marie C. McCormick Martha Kropf and Johnny Blair "Americans' Views on Children's Health." *Journal of the American Medical Association*, December 23/December 30, 1998, pp. 2122-2127.

Book Chapters

- Knack, Stephen and Martha Kropf. "The Use of Inferior Voting Technology: The Election Reform Myth" in *The Florida President Recount Controversy and Election Reform in the U.S.*, edited by Henry Brady and Bernard Grofman. (Forthcoming, N.D., Cambridge University Press.)
- Kropf, Martha. "Dogs and Dead People: Incremental Election Reform in Missouri." In *Election Reform: Politics and Policy*, edited by Daniel J. Palazzolo and James W. Ceaser, (Forthcoming, 2004, Lexington Books).
- Kropf, Martha. "Question Wording and Context Matters" forthcoming, *The Encyclopedia of Public Opinion Research* (forthcoming, Fall 2004, ABC-CLIO).
- Kropf, Martha. "Methods of Collecting Survey Data," forthcoming, *The Encyclopedia of Public Opinion Research* (forthcoming, Fall 2004, ABC-CLIO).



**Book Chapters, continued...**

Kropf, Martha and Stephen Knack. 2004. "Balancing Competing Interests: Voting Equipment in the 1996 Presidential Election." in *Counting Votes: Lessons from the 2000 Presidential Election in Florida*, edited by Robert P. Watson, (University of Florida Press).

Kropf, Martha, E. Terrence Jones, Matt McLaughlin and Dale Neuman. 2004. "Battle for the Bases: The 2002 Missouri Senate Race." In *The Last Hurrah: Soft Money and Issue Advocacy in the 2002 Congressional Election*, edited by David Magleby and Quin Monson, Brookings Institution Press.

Kropf, Martha E. 2003. "Talent Defeats Carnahan in the Show-Me State." In *The Roads to Congress 2002*, edited by Sunil Ahuja and Robert Dewhurst, BookMasters, Inc.

Robinson, John P. and Martha Kropf. 1999. "Specialized Political Attitude Scales." Appendix to Chapter 1 of *Measures of Political Attitudes*, edited by John P. Robinson, Phillip R. Shaver, and Lawrence S. Wrightsman, The Academic Press.

**Publications**

**In Progress**

**Articles Under Review**

Kropf, Martha, Janine Parry, Jay Barth and E. Terrence Jones. "Pursuing the Early Voter: Which Bird Gets the Worm?" Revise and resubmit.

Kimball, David and Martha Kropf. "Ballot Design and Unrecorded Votes in the 2002 Midterm Election." Under review.

Kropf, Martha and Stephen Knack. "Technological Trade-offs: The Effects of Second Chance Technology on the Probability of Voting." Under review.

Parry, Janine, Jay Barth, Martha Kropf and E. Terrence Jones. "Mobilizing Voters: A Dynamic Model of Campaign Effects." Under review.

**Book in Progress:**

*Viewers Like You: Community Norms and Contributions to Public Broadcasting.*

**Book Reviews**

Kropf, Martha. 2003. Book review of *Mediated Politics: Communication in the Future of Democracy*, Edited by W. Lance Bennett and Robert M. Entman. *Journal of Politics*, 65(3): 940-942.

Kropf, Martha. 1999. Book Review of *Reflections on Statistics: Learning, Teaching and Assessment in Grades K-12*, Edited by Susanne P. Lajoie. *Journal of Official Statistics*. 15(3): 466-468.

**Monographs/  
Grant Reports**

Jones, E. Terrence, Martha Kropf, Matt McLaughlin and Dale Neuman. 2003. "The Missouri Senate Race." In *The Last Hurrah: Soft Money and Issue Advocacy in the 2002 Congressional Elections*, edited by David B. Magleby and J. Quin Monson. Report of a Grant Funded by the Pew Charitable Trusts, Center for the Study of Elections and Democracy: Brigham Young University.

Kimball, David and Martha Kropf. 2002. "Federal Election Reform Bill Will Require Action by Missouri." Missouri Legislative Academy Issue Brief, #02-02.

**Kropf Vitae, page 4 of 9**  
**Monographs, continued...**

Kropf, Martha, Jennifer Wilding and Valley Renshaw. 2002. "Kansas City Consensus Issue Identification Survey." Grant Report to Center for the City, University of Missouri Kansas City and Kansas City Consensus.

Kropf, Martha and Johnny Blair. "There's No Place Like Home: Using Time Diary Data to Predict Respondent Availability." *2000 Proceedings of the American Statistical Association: Section on Survey Research Methods*, Alexandria, VA.

Kropf, Martha, Anthony Simones, E. Terrence Jones, Dale Neuman, Allison Hayes, and Maureen Gilbride Mears. 2001. "The 2000 Missouri Senate Race," in *Soft Money and Issue Advocacy in the 2000 Congressional Elections*, edited by David B. Magleby. Report of a Grant Funded by the Pew Charitable Trusts, Center for the Study of Elections and Democracy: Brigham Young University.

Jones, E. Terrence, Martha Kropf and Dale Neuman. 2001. "The Presidential Primaries in Missouri," in *Getting Inside the Outside Campaign: Issue Advocacy in the 2000 Presidential Primaries*, edited by David B. Magleby. Report of a Grant Funded by the Pew Charitable Trusts, Center for the Study of Elections and Democracy: Brigham Young University.

Kropf, Martha, Johnny Blair and Julie Scheib. "The Effect of Alternative Incentives on Cooperation and Refusal Conversion in a Telephone Survey." *Proceedings of the 1999 American Association for Public Opinion Research Meeting*.

Kaplan, Lori and Martha Kropf. *National Public Radio, 1999 Field Guide to Giving*, NPR Office of Strategic Planning and Audience Research.

Biographies for *The Encyclopedia of Women in American Politics*, (Oryx Press, 1999).

**Grants/  
Contracts**

"Issue Advocacy and Soft Money in the 2004 Presidential Election in Missouri." Center for the Study of Elections and Democracy, Brigham Young University. Award: \$8,450. (May 2004-February 2005). This award funds research concerning campaign activity in the presidential race in Missouri.

"Public Opinion Toward the Library in the Community." Kansas City, Missouri Public Library. Contract: \$6,372. (January 2004-June 2004). This grant/contract funds the survey conducted by my class, "Survey Research and Analysis," which is a service learning class at UMKC.

"Explaining Unrecorded Votes in Elections." University of Missouri System Research Board Grant, Requested \$48,468, Awarded \$38,468 (with David Kimball).

"Issue Advocacy and Soft Money in the 2002 Missouri Senate Election." Center for the Study of Elections and Democracy, Brigham Young University. Award: \$4400. (August 2002-February 2003). This award funds research concerning campaign activity in the Carnahan/Talent Senate race (with Dale A. Neuman).

"Voting and the Media: A New Look at Public Journalism." University of Missouri-Kansas City Faculty Research Grant, Award: \$6,000. (December 2001-January 2003).

**Kropf Vitae, page 5 of 9**

**Grants/Contracts, continued...**

"Kansas City Consensus Issue Identification Survey." University of Missouri-Kansas City, Center for the City, Faculty Knowledge Fund, Award: \$5,815. (January 2002-May 2002). This award provided the funding for a survey conducted by my class "Survey Research and Analysis" for the Kansas City Consensus, a policy research and advocacy group.

"Invalidated Ballots in the 1996 Presidential Election: A County-Level Analysis." University of Missouri-Kansas City Research Incentive Fund, Award: \$350. (April 2001). This award allowed me to purchase data for the voting equipment project.

"Issue Advocacy and Soft Money in the 2000 Missouri Senate and Presidential Elections." Center for the Study of Elections and Democracy and the Pew Charitable Trust Fund, \$13,500, 1999-2000 (with Dale A. Neuman). This award funded research concerning issue advocacy and soft money spending in the 2000 Missouri Senate and presidential elections.

"Viewers Like You: Community Norms and Contributions to Public Broadcasting, Part II." Aspen Institution Nonprofit Sector Research Fund, Dissertation Grant, Award: \$5,915, January 1997-September 1997. (Grant #96-2-NSRF-06).

**Pending Grant Applications**

"Ballot Design and Unrecorded Votes." (With David Kimball).

- Application submitted to Smith Richardson Foundation Domestic Public Policy Research Fellowship Program, June 2004 (\$60,000).
- Letter of Inquiry submitted to Carnegie Corporation of New York, July 2004.
- Application submitted to National Science Foundation, August 2004.

**Conferences**

**Presentations**

"Going Negative in Competitive U.S. Senate Elections: Who Notices and So What?" Paper prepared for presentation at the 100<sup>th</sup> Annual Meeting of the American Political Science Association, September 2-5, 2004, Chicago, IL (with E. Terrence Jones, Jay Barth and Janine Parry).

"Giving People What They Want: Is Synchronicity Between Desired Political Communication and Campaign Activity Important in Shaping Voter Turnout?" Paper prepared for presentation at the 27<sup>th</sup> Scientific Meeting of the International Society of Political Psychologists, July 2004, Lund, Sweden (with Jay Barth, E. Terrence Jones and Janine Parry).

"Ballot Design and Unrecorded Votes in the 2002 Midterm Election." Paper prepared for presentation at the 2004 American Association for Public Opinion Research Meeting, May 13-16, 2004, Phoenix, AZ (with David Kimball).

"Public Opinion Toward the Library in the Community." Paper prepared for presentation at the 2004 American Association for Public Opinion Research Conference, May 13-16, 2004, Phoenix, AZ (with Linda Babcock, Brian Barton, Michael Joyce, Jennifer Lyon and Mendel Martin).

"Early and Absentee Voting and Unrecorded Votes in the 2002 Midterm Election." Paper prepared for presentation at the 2004 Midwest Political Science Association Meeting, April 15-18, 2004, Chicago, IL (with David Kimball).

**Conference Presentations, continued...**

"Floating Voters in Competitive U.S. Senate Elections: The 2002 Arkansas and Missouri Contests." Paper presented at the 2004 Western Political Science Association Meeting, March 11-13, 2004, Portland, OR (with E. Terrence Jones, Janine Parry and Jay Barth).

"Mobilizing Voters: A Dynamic Model of Campaign Effects." Paper prepared for Presentation at the 2003 Southern Political Science Association Meeting, January 8-11, 2004, New Orleans, LA (with Janine Parry, Jay Barth and E. Terrence Jones).

"Pursuing the Early Voter: Which Bird Gets the Worm?" Paper prepared for Presentation at the 2003 Northeastern Political Science Association Meeting, November 7-9, 2003, Philadelphia, PA (with Janine Parry, Jay Barth and E. Terrence Jones).

"Ballot Design and Unrecorded Votes in the 2002 Midterm Election." Paper prepared for Presentation at the 99<sup>th</sup> Annual American Political Science Association Meeting, August 28-31, 2003, Philadelphia, PA (with David Kimball.)

"Dogs and Dead People: Incremental Election Reform in Missouri." Paper prepared for the Conference on Election Reform: Politics and Policy, May 29, 2003, Washington, DC.

"The 2002 Missouri Senate Race." Paper presented at the 2003 Midwest Political Science Association Meeting, April 3-6, 2003, Chicago, IL (with E. Terrence Jones, Matt McLaughlin and Dale Neuman).

"The Effect of Second Chance Technology on the Probability of Voting." Paper presented at the 2003 Midwest Political Science Association Meeting, April 3-6, 2003, Chicago, IL (with Stephen Knack).

"Missouri's Legacy: Jean Carnahan and Her Run for Senate." Paper presented at the 2002 Southern Political Science Association Meeting, November 6-9, 2002, Savannah, GA.

"Challenges of Survey Research: An Active Learning Experience." Poster presented at the 57<sup>th</sup> Annual American Association for Public Opinion Research Meeting, May 16-19, 2002, St. Pete's Beach, FL (with Kadie Bangura, Joel Blevins, Janette Henson, Brooke Hawkins and Tracy Rogers).

"Communicating Civic Norms of Cooperation: The Case of PBS." Paper presented at the 60<sup>th</sup> Annual Midwest Political Science Association Meeting, April 25-28, 2002, Chicago, IL.

"Invalidated Ballots in the 1996 Presidential Election: A County-Level Analysis." Paper presented at the 2001 Southern Political Science Association Meeting, November 7-11, 2001 (with Stephen Knack). Also presented at the 2002 Public Choice Society Meeting, March 21-24, 2002, San Diego, CA.

"The Missouri Senate Election." Paper presented at the 2001 American Political Science Association, August 30-September 2, 2001, San Francisco, CA (with Anthony Simones, E. Terrence Jones, Dale Neuman, Allison Hayes, and Maureen Gilbride Mears).

"Voting and the Media: A New Look at Public Journalism." Paper presented at the 2001 Midwest Political Science Association. April 18-22, 2001, Chicago, IL.

**Conference Presentations, continued...**

- "Who Uses Inferior Voting Technology?" Paper presented at the 2001 Public Choice Society Meeting, March 9-11, 2001, San Antonio, TX (with Stephen Knack).
- "The Missouri Primary." Paper presented at the American Political Science Meeting, Washington, DC, August 31-September 2, 2000 (with E. Terrence Jones and Dale Neuman, with Sam Dreiling and Maureen Gilbride Mears).
- "Won't You Be My Neighbor? Community Norms and Contributions to Public Broadcasting." Paper presented at the 2000 American Political Science Meeting, Washington, DC, August 31-September 2, 2000.
- "Viewers Like You: Community Norms and Contributions to Public Broadcasting—A Survey of PBS Viewers." Paper presented at Public Broadcasting and the Public Interest Conference, University of Maine, Portland, Maine, June 15-18, 2000.
- "The Federal Radio Act of 1927: The Role of the Radio Industry in the Origins of Broadcast Regulation." Paper presented at the International Communication Association Meeting, Acapulco, Mexico, June 1-5, 2000.
- "There's No Place Like Home: Using Time Diary Data to Predict Respondent Availability." Paper presented at the Joint Session of the American Association for Public Opinion Research and the International Field Directors and Technologies Conference, Portland, Oregon. May 20, 2000 (with Johnny Blair and Jane Joseph).
- "The Effect of Incentives on Cooperation, Refusal Conversion and Home Recorder Contacts in Telephone Surveys." Paper presented at the Joint Session of the American Association for Public Opinion Research and the International Field Directors and Technologies Conference, St. Petersburg, FL. May 16, 1999 (with Julie Scheib and Johnny Blair).
- "Modeling Respondent Availability Using Time Diary Data." Paper presented at the 1998 Field Technology Conference, St. Louis, MO, April 18-20, 1998 (with Johnny Blair and Yun Chiao Kang).
- "Viewers Like You: Community Norms and Contributions to Public Broadcasting." Paper presented at the 1997 Association for Research on Nonprofit Organizations and Voluntary Action Annual Conference. December 4-6, 1997, Indianapolis, IN; also presented at the 1997 Southern Political Science Meeting, November 5-8, 1997, Norfolk, VA.
- "Viewers Like You: Community Norms and Contributions to Public Broadcasting." Paper presented at the 1997 American Political Science Association Meeting, August 28-31, 1997, Washington, DC (with Stephen Knack).
- "An Apple for the Teacher: Teaching Students to be Professors." Paper presented at the 1997 American Political Science Association Meeting, August 28-31, 1997, Washington, DC (with Julie Dolan, Marni Ezra and Karen O'Connor).
- "Coming into the Profession: The Professionalization and Socialization of Graduate Students in Political Science." Paper presented at the 1996 Northeast Political Science Association Meeting, November 14-16, 1996, Boston, MA (with Julie Dolan, Marni Ezra and Karen O'Connor).

**Conference Presentations, continued...**

"Overworked, Overwrought and Underpaid: Teaching Students to Teach." Paper presented at the 68th Annual Southern Political Science Meeting, November 6-9, 1996, Atlanta, GA (with Julie Dolan, Marni Ezra and Karen O'Connor).

"Why Do People Contribute to Public Broadcasting?" Paper presented at the 1996 Public Choice Society Meeting, April 12-14, 1996, Houston, TX (with Stephen Knack).

"The Electoral Glass Ceiling: The Effect of Media on Women Senate Candidates." Paper presented at the 54th Annual Midwest Political Science Association Meeting, April 18-20, 1996, Chicago, IL (Co-author: John A. Boiney).

**Other**

**Conference  
Participation**

Chair and Discussant, "U.S. Senate Campaigns and Elections." Annual Midwest Political Science Association Meeting, April 16, 2004.

Chair and Discussant, "Mandates and State Violence." 60<sup>th</sup> Annual Midwest Political Science Association Meeting, April 28, 2002.

Roundtable on "Soft Money and Issue Advocacy in the 2000 Elections." 2001 Western Political Science Association Meeting, March 15-17, 2001.

Discussant, "Structural Influences on Voter Turnout," 58<sup>th</sup> Annual Midwest Political Science Association Meeting, April 27-30, 2000.

Discussant, "Social Capital and Political Participation: National, Subnational and Cross-National Perspectives," 57<sup>th</sup> Annual Midwest Political Science Association Meeting, April 15-17, 1999.

**Expert**

**Testimony**

Offered Affidavit in *Working Families, et. al v. New York City Board of Elections* on behalf of the plaintiff (asked to participate by the Brennan Center for Justice, who was representing the plaintiff). (Summer 2003; case settled out of court. The NYC Board of Elections disabled the sensor latches on lever voting machines. The plaintiffs asked the Election Board to reconnect them.)

Offered Affidavit and Deposition in *Stewart v. Blackwell*, Ohio, on behalf of the plaintiffs, represented by the ACLU. (Fall 2003-present. In this lawsuit, the plaintiffs are asking the state and four counties to stop using punchcard ballots and optical scan voting equipment with central count ballots.)

Testified before the Blunt Commission on Electoral Reform, January 12, 2001, Hearings held at the University of Missouri-Kansas City

\*Special Note: My colleague Stephen Knack testified before two United States Congressional Committees about our paper, "Who Uses Inferior Voting Technology?" (Committee on Rules and Administration, Hearing on Election Reform, and Committee on Governmental Affairs, Hearing on Federal Election Practices and Procedures).

**Professional  
Memberships**

American Association for Public Opinion Research  
American Political Science Association  
Midwest Political Science Association  
Southern Political Science Association  
Midwest Association for Public Opinion Research

- Honors** University of Missouri-Kansas City Faculty Scholar Award, 2004  
University of Missouri System New Faculty Teaching Scholar, 2001-2002  
Meriwether Lewis Fellow, University of Missouri-Kansas City, May 2001  
Selected for New Faculty Tour (University of Missouri System), 2000  
American University Award for Outstanding Scholarship at the Graduate Level (1998)  
American University School of Public Affairs Award for Outstanding Scholarship at the Graduate Level (1998)  
American University Dissertation Fellowship (1996)  
American University Dean's Scholar (1993-1996)  
Phi Beta Kappa, Pi Sigma Alpha, Mortar Board National Honor Society, Order of Omega
- Professional Service** Reviewer for *Journal of Politics*, *American Politics Review*, *Social Sciences Quarterly*, *American Journal of Political Science*, *Political Research Quarterly* and *State and Local Government Review*  
Reviewer for Lynne Rienner Publications  
Reviewer for University of Missouri System Research Board Grants
- University Service** Students in the City Steering Committee (Service Learning guidance), October 2003-present (Helped Select Service Learning Faculty Fellows for 2004).  
Selection Committee, Center for the City Faculty Knowledge Fund Grants, 2002-2003  
Search Committee, Research Director Joint Hire, College of Arts and Sciences and Center for the City, December 2002-May 2003.  
Search Committee, Dean of the College of Arts and Sciences, October 2001-March 2002.  
UMKC Faculty Council on Urban Affairs, May 2001-present.  
University of Missouri System New Faculty Teaching Scholar, 2001-2002.  
University Honors and Awards Advisory Board, 2002-present.  
(Soros Scholarship and Truman Scholarship Selection Committees)
- Community Involvement** Regular interviews/appearances in/on local and national media outlets (KCUR-FM, *Kansas City Star*, *The Washington Post*).  
  
"Public Opinion Toward the Library in the Community." Survey conducted for the Kansas City Public Library as a part of my Survey Research and Analysis Class, Spring 2004.  
  
Data Analysis for "By the People." National deliberative democracy experiment held in various locations around the nation. Organized data entry and conducted data analysis for KCPT-TV, Kansas City's PBS affiliate, January 2004.  
  
Mid-America Regional Council Public Managers' Workshops. Helped organize and lead "Political Characteristics of Metropolitan Kansas City." November 2003.  
  
"Issue Identification Survey." Conducted for Kansas City Consensus as a part of my Survey Research and Analysis Class. Spring 2002.
- Community Activities** Member, Central United Methodist Church. (on the Church and Society Committee).  
National Women's Political Caucus.  
Block Captain, 5700 of Harrison Street, Kansas City, MO
- Family** Husband: John Szmer  
Daughter: Gwendolyn Margaret Szmer, born September 26, 2003

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## ISSUES

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### Equal Rights Amendment

#### Equal Rights Amendment

An amendment to guarantee equal rights to women has still never been ratified and added to the U.S. Constitution, even though it was first introduced in 1923. The Equal Rights Amendment passed Congress in 1972 but lapsed in 1982 when it fell three states short of ratification.

**Where we stand:** The National Women's Political Caucus supports the adoption of the Equal Rights Amendment to the United States Constitution. [more...](#)

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### Health Care for Women

#### Long-Term Care Insurance

Long-term care is required for many Americans with permanent disabilities and illnesses. Assisted living, whether at home or in a nursing home,...

**Where we stand:** The National Women's Political Caucus supports long-term care insurance for women. [more...](#)

#### Equality of Insurance Benefits

A majority of insurance companies do not provide coverage for essential services, such as contraceptive drugs and devices. Contraceptives are a...

**Where we stand:** The National Women's Political Caucus supports mandatory coverage of family planning, including contraceptive drugs and devices. [more...](#)

#### Prescription Drug Coverage by Medicare

In December of 2003 Congress passed a law creating a Medicare prescription drug discount card, allowing those eligible for Medicare to receive...

**Where we stand:** The National Women's Political Caucus supports full coverage of prescription drugs by Medicare. [more...](#)

---

### Judicial Appointments

#### Pro-Choice Judicial Nominees

In January of 1973 the Supreme Court legalized abortion, giving women the right to choose. The right to choose has been attacked recently,...

**Where we stand:** The National Women's Political Caucus supports pro-choice judicial nominees who will uphold Roe v. Wade and continue to give women the right to choose. [more...](#)

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### Reproductive Choice

#### Mandatory Waiting Periods for Abortions

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Mandatory waiting periods require women seeking abortions to wait for a period of time before the procedure may be performed. Generally, a...

**Where we stand:** The National Women's Political Caucus supports a woman's access to abortions without unnecessary hassle and delay. more...

#### **International Human Rights for Women**

Women are often the target of human rights violations specifically because they are women. Violence and sexual abuse in the home is still...

**Where we stand:** The National Women's Political Caucus supports human rights for all women across the globe, so that women may live in a free society. more...

#### **RU486**

In 2000, the Food and Drug Administration approved RU486, more commonly known as the abortion pill. RU486 is a non-surgical pill that enables...

**Where we stand:** The National Women's Political Caucus supports availability of RU486 and emergency contraception. The NWPC does not support pharmacists who determine who can and cannot receive them. more...

---

#### **Violence Against Women Act**

##### **Violence Against Women Act Reauthorization 2005**

The Violence Against Women Act (VAWA) of 2000 expires in 2005 and the remarkable gains we've made in ending domestic and sexual violence could come to a halt if Congress does not act quickly.

**Where we stand:** The National Women's Political Caucus supports the reauthorization and funding of the Violence Against Women Act. more...

---

#### **Women and Education**

##### **Sex Education**

Sex education provides accurate information on healthy relationships, peer pressure, contraception and abstinence in order for youth to use...

**Where we stand:** The National Women's Political Caucus supports comprehensive sex education that allows youth to know all of their options and make informed decisions. more..

##### **Equal Pay**

The Equal Pay Act of 1963 worked to end the pay differential that exists between men and women. The act made it illegal for employers to pay...

**Where we stand:** The National Women's Political Caucus supports equal pay for everyone, regardless of sex or race. more...

---

#### **Women and Politics**

##### **Campaign Finance Reform**

The total cost of the presidential and congressional campaigns in 2004 was just under \$4 billion dollars, up almost \$1 billion from 2000. In...

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**Where we stand:** The National Women's Political Caucus supports campaign finance reform that levels the playing field for candidates to run for office. more...

---

**Working Families**

**Family Leave Act**

The Family Leave Act mandated that an employer must allow an employee to take off up to 12 weeks of unpaid leave in a year in order to care for...

**Where we stand:** The National Women's Political Caucus supports the Family Leave Act and would like to see an expansion of its coverage. more...

**A Living Wage**

A living wage would increase the income of low wage earners so that they may be able to support their family without additional government...

**Where we stand:** The National Women's Political Caucus supports the adoption of a national living wage. more...

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National Women's Political Caucus

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## Daniel Hays Lowenstein Biography

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#### **Daniel Hays Lowenstein**

*Professor of Law*

Born New York, New York, 1943

A.B. Yale, 1964

LL.B. Harvard, 1967

UCLA Law faculty since 1979

Daniel Lowenstein teaches *Election Law*, *Statutory Interpretation & Legislative Process*, *Political Theory*, and *Law & Literature*. A leading expert on election law, he has represented members of the House of Representatives in litigation regarding reapportionment and the constitutionality of term limits. He is a member of the Board of Directors of the award-winning theatre troupe Interact and regularly brings the company to the School of Law to perform plays with legal themes, such as Sophocles' *Antigone*, Ibsen's *Rosmerholm*, and Wouk's *The Caine Mutiny Court Martial*.

Professor Lowenstein worked as a staff attorney at California Rural Legal Assistance for two and one-half years. While working for California's Secretary of State, Edmund G. Brown Jr. in 1971, he specialized in election law, and was the main drafter of the *Political Reform Act*, an initiative statute that California voters approved in 1974, thereby creating a new Fair Political Practices Commission. Governor Brown appointed Professor Lowenstein as first chairman of the Commission. He has served on the national governing board of Common Cause and has been a board member and a vice president of Americans for Nonsmokers' Rights.

Professor Lowenstein's textbook, *Election Law* (1995), appears to be the first text on American election law since 1877. He has written on such topics as campaign finance, redistricting, bribery, initiative elections, political parties, commercial speech, and *The Merchant of Venice*.

For information on Interact, click on:

Professor Lowenstein represented certain plaintiffs in California ProLife Council PAC v. Scully, challenging California regulations of slate mail. For a pdf file containing the March 1, 2001, order of U.S. District Judge Lawrence K. Karlton declaring these regulations unconstitutional, use the following link:  
<http://www.law.ucla.edu/faculty/bios/lowenste/slatemalloorder.pdf>

Read Professor Lowenstein's 10/02/2003 Daily Journal article: "[Valid Ballot - Panel Exploited Precedent to Rationalize Postponement of Recall Vote](#)".

Harvard Law School

## John F. Manning



Professor of Law

Office: [REDACTED]  
Assistant: [REDACTED]  
Phone: [REDACTED]  
Email: [REDACTED]

### Research Interests

- Administrative Law
- Federal Courts
- Separation of Powers
- Statutory Interpretation

### Education

- Harvard College A.B. Summa Cum Laude 1982, History
- Harvard Law School J.D. Magna Cum Laude 1985

### Appointments

- Professor of Law, 2004

### Representative Publications

- Manning, John F. "The Eleventh Amendment and the Interpretation of Precise Constitutional Texts," 113 *Yale Law Journal* (2004).
- Manning, John F. "The Absurdity Doctrine," 116 *Harvard Law Review* 2387 (2003).
- Manning, John F. "Textualism and the Equity of the Statute," 101 *Columbia Law Review* 1 (2001).
- Manning, John F. "The Nondelegation Doctrine as a Canon of Avoidance," 2000 *Supreme Court Review* 223 (2000).
- Manning, John F. "Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules," 96 *Columbia Law Review* 612 (1996).

### Bibliography

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BROCKTON, MA 02302

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11/11/2002                      500.00                      22992974691

**MANNING, JOHN F.**  
DORCHESTER, MA 02125  
UMASS/SOCIAL WORKER

LYNCH, STEPHEN F  
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028147



**DR. RONALD D. MICHAELSON**

**Residence**

[REDACTED]  
Springfield, IL 62704  
[REDACTED]  
[REDACTED]

**Personal**

Date of Birth - December 31, 1941

Marital Status - Married with 2 children

U.S. Citizen

**Education**

Bachelor of Arts, Wheaton College, Wheaton, IL 1963

M.A. in Political Science, Northwestern University, Chicago, IL 1965

Ph.D. in Government, Southern Illinois University, Carbondale, IL 1970

**Professional Experience**

**Political Consultant, June, 2003 to present**

Current clients include the Sangamon County Clerk, the Chicago Board of Election Commissioners and Strategic Marketing and Mailing, Champaign, IL

**Visiting Professor of Political Studies – University of Illinois at Springfield,  
January 2005 to present**

### **Executive Director/Illinois State Board of Elections**

March, 1976 to May, 2003. The Executive Director has complete administrative and supervisory responsibility for the day-to-day operations of the entire agency which includes a staff of 65 and a budget of approximately \$9 million.

### **Director of Administration/Illinois State Board of Elections**

September, 1974 to March, 1976. The Director of Administration had line responsibility for all administrative affairs and policies of the Board, including budget preparation and fiscal control, personnel, systems and procedures, and office management.

### **Assistant to the Vice President of Academic Affairs and Assistant Professor of Public Affairs/Sangamon State University, Springfield.**

February, 1973 to September, 1974. This position included involvement with several key academic issues such as tenure, faculty recruitment, budgeting, grants and contracts as well as a 12-hour teaching load.

### **Assistant to the Governor/Illinois Governor Richard B. Ogilvie**

January, 1969 to January, 1973. This position included policy development work in a number of substantive areas as well as legislative relations, speech writing, and a variety of other administrative and management duties.

### **PUBLICATIONS**

1. "The Politics of Gubernatorial Endorsements in Illinois: An Empirical Analysis," Public Affairs Bulletin, (Carbondale: Public Affairs Research Bureau, Southern Illinois University, January-February, 1971, Volume IV, Number 1).

2. "The Illinois Executive and Urban Problems," The State and the Urban Crisis, (Urbana: Institute of Government and Public Affairs, University of Illinois, 1970), pp. 27-35.
  
3. "An Analysis of the Chief Executive: How a Governor Spends His Time," Public Affairs Bulletin, (Carbondale: Public Affairs Research Bureau, Southern Illinois University, September-October, 1971, Volume IV, Number 4).
  
4. "Positive Politics," HIS Magazine, (Inter-Varsity Press, Downers Grove, Illinois) May, 1972.
  
5. "Positive Politics," Church Herald (Reformed Church), Fall, 1972.
  
6. "Positive Politics," CBMC Contract (Christian Business Men's Committee, Chicago), August, 1972.
  
7. "Positive Politics," Vital Christianity, (Assembly of God), October, 1972.
  
8. "An Analysis of the Chief Executive: How a Governor Uses His Time," State Government, XLV, Summer, 1972, pp. 153-160.
  
9. "Are You Ready to Vote?" Eternity Magazine, (Philadelphia), September, 1972, pp. 22-24, 60-61.
  
10. "Are You Ready to Vote?" Christianity Applied, October, 1974.

11. "Gubernatorial Staffing-Problems and Issues: The Ogilvie Experience," Center for Governmental Studies, Northern Illinois University, February, 1974.
12. "Money in Politics: Campaign Finance Reform in Illinois," Issues in Illinois Policy (Springfield: Illinois Legislative Studies Center, Sangamon State University, November, 1974), pp. 55-76.
13. "The Politics of Morality" Eternity Magazine, (Philadelphia), May, 1976, pp.15-18.
14. "State Board of Elections," Illinois Issues, March, 1977, p. 14, 16-17.
15. "Consolidation of Elections," Illinois Elections, (Springfield: Illinois Issues, Sangamon State University), 1979, pp.70-74.
16. "Volunteer Deputy Registrars," in Voter Registration in the States, Washington: National Center for Policy Alternatives, pp. 55-69, 1985.
17. "PAC Man Cometh in Illinois," Illinois Issues, (Springfield: Sangamon State University), May, 1987, pp.10-12.
18. "PAC Man Cometh in Illinois," Comparative State Politics Newsletter (Springfield: Sangamon State University), June, 1987, Volume 8, No.3, pp. 18-22.
19. "Campaign Finance Reform," COGEL Guardian, April, 1988, pp.3-4.

20. "1989 Campaign Finance Update: Legislation and Litigation," Citizens Research Foundation, Los Angeles, 1990.

21. "Financing Political Campaigns," COGEL Guardian, December 1991.

22. "1991 Campaign Finance Update: Legislation and Litigation," Citizens Research Foundation, Los Angeles, 1992.

23. "Election Legislation, 1992-93," in The Book of the States, Volume 30, Council of State Governments, Lexington, KY 1990, pp. 204-226.

24. "Financing State and Local Elections: Recent Developments," in The Book of the States, Volume 30, Council of State Governments, Lexington, KY, 1994, pp. 227-228.

25. "1992 Campaign Finance Update: Legislation and Litigation in the 50 States, the District of Columbia, and the Federal Government,@ The Council of State Governments.

26. "The State of the States in 1991," COGEL Guardian, Volume 12, No. 6, December 1991, pp. 1, 34.

27. "The State of the States in 1991: Financing Political Campaigns," Lexington, KY: The Council of State Governments, 1991.

28. "The State of the States in 1992: Financing Political Campaigns," COGEL Guardian, Volume 14, No. 1, February 1993, pp.4-6.

29. "The State of the States in 1993: Financing Political Campaigns," COGEL Guardian, Volume 14, No. 6, December 1993, pp. 1, 3-4.

30. "1993 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

31. "1994 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

32. "1995 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

33. "1996 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

34. "1997 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

35. "1998 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

36. "1999 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

37. "2000 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

38. "Campaign Finance Activity in the States: Where the Action Is," Public Integrity, Vol. III, No. I, Winter 2001.

39. "2001 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

40. "2002 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

41. "Trends in State Campaign Financing," The Book of the States, 2003, Vol.35, The Council of State Governments.

### **Teaching Appointments**

Adjunct Professor of Public Affairs at University of Illinois at Springfield, teaching courses in the areas of political studies and public affairs. Began in 1970.

Visiting Professor at Wheaton College (Illinois), teaching courses on an available basis in the political science department. Not a current appointment.

### **Professional Associations**

1. Advisory Committee of the Federal Election Commission - past member.
2. Council on Governmental Ethics Laws - Member and past National Chairman.
3. American Society for Public Administration - Member and Past President of the Central Illinois Chapter.
4. International Foundation for Electoral System - Current participant in international electoral exchanges. Member of an official U.S. delegation to observe the electoral process in the Soviet Union, March, 1990.
5. The Election Center - member of its Professional Education Committee.

**Awards**

Election to the Springfield Sports Hall of Fame, May 2000.



**DR. RONALD D. MICHAELSON**

**Residence**

[REDACTED]  
Springfield, IL 62704  
[REDACTED]  
[REDACTED]

**Personal**

Date of Birth - December 31, 1941

Marital Status - Married with 2 children

U.S. Citizen

**Education**

Bachelor of Arts, Wheaton College, Wheaton, IL 1963

M.A. in Political Science, Northwestern University, Chicago, IL 1965

Ph.D. in Government, Southern Illinois University, Carbondale, IL 1970

**Professional Experience**

**Political Consultant, June, 2003 to present**

Current clients include the Sangamon County Clerk, the Chicago Board of Election Commissioners and Strategic Marketing and Mailing, Champaign, IL

**Visiting Professor of Political Studies – University of Illinois at Springfield,  
January 2005 to present**

### **Executive Director/Illinois State Board of Elections**

March, 1976 to May, 2003. The Executive Director has complete administrative and supervisory responsibility for the day-to-day operations of the entire agency which includes a staff of 65 and a budget of approximately \$9 million.

### **Director of Administration/Illinois State Board of Elections**

September, 1974 to March, 1976. The Director of Administration had line responsibility for all administrative affairs and policies of the Board, including budget preparation and fiscal control, personnel, systems and procedures, and office management.

### **Assistant to the Vice President of Academic Affairs and Assistant Professor of Public Affairs/Sangamon State University, Springfield.**

February, 1973 to September, 1974. This position included involvement with several key academic issues such as tenure, faculty recruitment, budgeting, grants and contracts as well as a 12-hour teaching load.

### **Assistant to the Governor/Illinois Governor Richard B. Ogilvie**

January, 1969 to January, 1973. This position included policy development work in a number of substantive areas as well as legislative relations, speech writing, and a variety of other administrative and management duties.

### **PUBLICATIONS**

1. "The Politics of Gubernatorial Endorsements in Illinois: An Empirical Analysis," Public Affairs Bulletin, (Carbondale: Public Affairs Research Bureau, Southern Illinois University, January-February, 1971, Volume IV, Number 1).

2. "The Illinois Executive and Urban Problems," The State and the Urban Crisis, (Urbana: Institute of Government and Public Affairs, University of Illinois, 1970), pp. 27-35.
  
3. "An Analysis of the Chief Executive: How a Governor Spends His Time," Public Affairs Bulletin, (Carbondale: Public Affairs Research Bureau, Southern Illinois University, September-October, 1971, Volume IV, Number 4).
  
4. "Positive Politics," HIS Magazine, (Inter-Varsity Press, Downers Grove, Illinois) May, 1972.
  
5. "Positive Politics," Church Herald (Reformed Church), Fall, 1972.
  
6. "Positive Politics," CBMC Contract (Christian Business Men's Committee, Chicago), August, 1972.
  
7. "Positive Politics," Vital Christianity, (Assembly of God), October, 1972.
  
8. "An Analysis of the Chief Executive: How a Governor Uses His Time," State Government, XLV, Summer, 1972, pp. 153-160.
  
9. "Are You Ready to Vote?" Eternity Magazine, (Philadelphia), September, 1972, pp. 22-24, 60-61.
  
10. "Are You Ready to Vote?" Christianity Applied, October, 1974.

11. "Gubernatorial Staffing-Problems and Issues: The Ogilvie Experience," Center for Governmental Studies, Northern Illinois University, February, 1974.
12. "Money in Politics: Campaign Finance Reform in Illinois," Issues in Illinois Policy (Springfield: Illinois Legislative Studies Center, Sangamon State University, November, 1974), pp. 55-76.
13. "The Politics of Morality" Eternity Magazine, (Philadelphia), May, 1976, pp.15-18.
14. "State Board of Elections," Illinois Issues, March, 1977, p. 14, 16-17.
15. "Consolidation of Elections," Illinois Elections, (Springfield: Illinois Issues, Sangamon State University), 1979, pp.70-74.
16. "Volunteer Deputy Registrars," in Voter Registration in the States, Washington: National Center for Policy Alternatives, pp. 55-69, 1985.
17. "PAC Man Cometh in Illinois," Illinois Issues, (Springfield: Sangamon State University), May, 1987, pp.10-12.
18. "PAC Man Cometh in Illinois," Comparative State Politics Newsletter (Springfield: Sangamon State University), June, 1987, Volume 8, No.3, pp. 18-22.
19. "Campaign Finance Reform," COGEL Guardian, April, 1988, pp.3-4.

20. "1989 Campaign Finance Update: Legislation and Litigation," Citizens Research Foundation, Los Angeles, 1990.

21. "Financing Political Campaigns," COGEL Guardian, December 1991.

22. "1991 Campaign Finance Update: Legislation and Litigation," Citizens Research Foundation, Los Angeles, 1992.

23. "Election Legislation, 1992-93," in The Book of the States, Volume 30, Council of State Governments, Lexington, KY 1990, pp. 204-226.

24. "Financing State and Local Elections: Recent Developments," in The Book of the States, Volume 30, Council of State Governments, Lexington, KY, 1994, pp. 227-228.

25. "1992 Campaign Finance Update: Legislation and Litigation in the 50 States, the District of Columbia, and the Federal Government,@ The Council of State Governments.

26. "The State of the States in 1991," COGEL Guardian, Volume 12, No. 6, December 1991, pp. 1, 34.

27. "The State of the States in 1991: Financing Political Campaigns," Lexington, KY: The Council of State Governments, 1991.

28. "The State of the States in 1992: Financing Political Campaigns," COGEL Guardian, Volume 14, No. 1, February 1993, pp.4-6.

29. "The State of the States in 1993: Financing Political Campaigns," COGEL Guardian, Volume 14, No. 6, December 1993, pp. 1, 3-4.

30. "1993 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

31. "1994 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

32. "1995 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

33. "1996 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

34. "1997 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

35. "1998 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

36. "1999 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

37. "2000 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

38. "Campaign Finance Activity in the States: Where the Action Is," Public Integrity, Vol. III, No. I, Winter 2001.

39. "2001 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

40. "2002 Campaign Finance Update: Legislation and Litigation in the 50 states, the District of Columbia, and the Federal Government," The Council of State Governments.

41. "Trends in State Campaign Financing," The Book of the States, 2003, Vol.35, The Council of State Governments.

### **Teaching Appointments**

Adjunct Professor of Public Affairs at University of Illinois at Springfield, teaching courses in the areas of political studies and public affairs. Began in 1970.

Visiting Professor at Wheaton College (Illinois), teaching courses on an available basis in the political science department. Not a current appointment.

### **Professional Associations**

1. Advisory Committee of the Federal Election Commission - past member.
  
2. Council on Governmental Ethics Laws - Member and past National Chairman.
  
3. American Society for Public Administration - Member and Past President of the Central Illinois Chapter.
  
4. International Foundation for Electoral System - Current participant in international electoral exchanges. Member of an official U.S. delegation to observe the electoral process in the Soviet Union, March, 1990.
  
5. The Election Center - member of its Professional Education Committee.

### **Awards**

Election to the Springfield Sports Hall of Fame, May 2000.



**ABIGAIL THERNSTROM**

**VICE-CHAIR**

Senior Fellow, Manhattan Institute  
New York City, New York

Abigail Thernstrom is a Senior Fellow at the Manhattan Institute in New York, a member of the Massachusetts State Board of Education, and a commissioner on the United States Commission on Civil Rights. She received her Ph.D. from the Department of Government, Harvard University, in 1975.

Thernstrom and her husband, Harvard historian Stephan Thernstrom, are the co-authors of America in Black and White: One Nation, Indivisible (Simon & Schuster), which the New York Times Book Review, in its annual end-of-the-year issue, named as one of the notable books of 1997. They are currently working on a new book: Getting the Answers Right: The Racial Gap in Academic Achievement and How to Close It.

They are also the editors of a forthcoming volume, Beyond the Color Line: New Perspectives on Race and Ethnicity, and their lengthy review of William G. Bowen and Derek Bok's much-noticed book, The Shape of the River, appeared in the June 1999 issue of the UCLA Law Review.

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President Clinton chose her as one of three authors to participate in his first "town meeting" on race in Akron, Ohio, on December 3, 1997, and she was part of a small group that met with the President again in the Oval Office on December 19th.

# John Samples

## Director, Center for Representative Government

John Samples directs Cato's Center for Representative Government, which studies campaign finance regulation, delegation of legislative authority, term limits, and the political culture of limited government and the civic virtues necessary for liberty. He is an adjunct professor at Johns Hopkins University. Prior to joining Cato, Samples served eight years as director of Georgetown University Press, and before that, as vice president of the Twentieth Century Fund. He has published scholarly articles in *Society*, *History of Political Thought*, and *Telos*. Samples has also been featured in mainstream publications like *USA Today*, the *New York Times*, and the *Los Angeles Times*. He has appeared on NPR, Fox News Channel, and MSNBC. Samples received his Ph.D. in political science from Rutgers University.

Media Contact: 202-789-5200

To Book a Speaking Engagement: 202-789-5226

E-Mail: [jsamples@cato.org](mailto:jsamples@cato.org)

## Speaking Topics

- Campaign Finance
- Congress
- Elections
- Election Law
- Enumerated Powers
- Federalism
- Politics and Political Parties
- Presidency
- Public Opinion
- Separation of Powers
- Term Limits
- 1st Amendment (free speech, church and state)
- 10th Amendment (enumerated powers)

## Selected Media Appearances

Audio of Tom Palmer and John Samples at James Madison University. [Windows Media]

John Samples discusses campaign finance on MSBC's *Barnicle*. [Real Media]

## Books

*The Republican Revolution 10 Years Later. Smaller Government or Business as Usual?* edited by Chris Edwards and John Samples (2005).

*Welfare For Politicians? Taxpayer Financing of Campaigns*, edited by John Samples (2005).

*James Madison and the Future of Limited Government*, edited by John Samples (2002).

## **Studies**

"The Failures of Taxpayer Financing of Presidential Campaigns," Cato Policy Analysis no. 500, November 25, 2003.

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"Government Financing of Campaigns: Public Choice and Public Values," Cato Policy Analysis no. 448, August 26, 2002.

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"More Government For All: How Taxpayers Subsidize Anti-Tax Cut Advocacy," Cato Policy Analysis, July 10, 2001.

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## **Opinion and Commentary**

"Mr. Smith Leaves Washington," *American Spectator (Online)*, August 24, 2005

"Happy Days," *Spectator.org*, June 9, 2005

"Your Blog Will Be Investigated Soon," *American Spectator*, May 10, 2005

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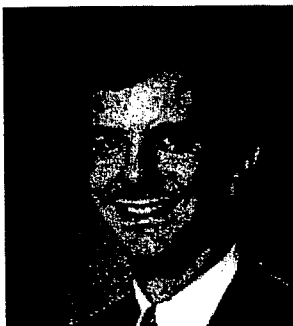
"Dial Down Corruption Fears: Media will expose lawmakers whose relatives don't deserve pay," *USA Today*, April 19, 2005

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# John C. Fortier

Research Fellow

[Print](#) [Mail](#)  
 



Fortier studies politics, the presidency, continuity of government, elections, the electoral college, election reform, and presidential succession and disability. He is the executive director of the Continuity of Government Commission, and is a weekly columnist for The Hill.

## **Professional Experience**

- Executive director, Continuity of Government Commission, 2002-present
- Project manager, Transition to Governing Project, AEI, 1998-2003
- Member, Presidency Research Career Service Award Committee, American Political Science Association, 2004
- Participant, National Election Initiative, Constitution Project, 2001-2002
- Teaching positions at University of Pennsylvania, 2004-2005; University of Delaware, 1995-1996; Boston College, 1992-1994; Harvard University, 1993
- Research associate, Worcester Municipal Research Bureau, 1997-1998

## **Education**

Ph.D., Boston College  
B.A., Georgetown University

## **Articles and Short Publications**

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How Would Each Candidate Govern?

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## **Speaking Engagements**

Ensuring the Continuity of the United States Government

028167

**Bradley A. Smith**  
**Professor of Law**  
**B.A., cum laude, Kalamazoo College, 1980**  
**J.D., cum laude, Harvard Law School, 1990**



One of the nation's leading authorities on Election Law and Campaign Finance, Professor Smith returns to Capital after five years in Washington, D.C., where he served as Commissioner, Vice Chairman, and Chairman of the Federal Election Commission (FEC). Nominated by President Clinton in February of 2000 to fill a Republican-designated seat on the Commission, Professor Smith was confirmed by the Senate in May of 2000 and took his seat the following month. Prior to his nomination, Smith had become a fixture in the national discussion on campaign finance, and was called "the most sought after witness" when Congress considered campaign finance issues. His writings have appeared in such academic journals as the Yale Law Journal, Georgetown Law Journal, and Pennsylvania Law Review, and in popular publications such as the Wall Street Journal, USA Today, and National Review. In 2001, Princeton University Press published his book, "Unfree Speech: The Folly of Campaign Finance Reform," which was praised by syndicated columnist George Will as "the year's most important book on governance." The Times of London called it "a much needed dose of realism which has relevance far beyond America," and Publishers Weekly described it as "a marvelous contrarian view: moderate in tone, elegant in language, clever in argument." Named FEC Chairman in January 2004, Professor Smith oversaw implementation of the McCain-Feingold campaign finance bill, and successfully fought to increase due process protections for defendants in FEC enforcement actions. Professor Smith has spoken at over 30 of the nation's law schools, including Harvard, Yale, Columbia, Stanford, Chicago, Michigan, and NYU. His many media credits include national appearances on ABC, NBC, PBS, Fox, CNBC, MSNBC, C-Span, and Bloomberg Media, including such programs as *Hardball* with Chris Matthews, and the *O'Reilly Factor*. He has also appeared on numerous local and national radio programs, and made television appearances in Great Britain, Japan, and Canada.

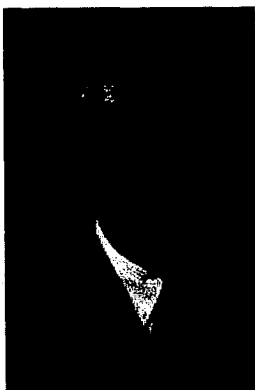
Prior to joining Capital's faculty in 1993, he served as United States Vice Consul in Ecuador, and worked as an attorney for the law firm of Vorys, Sater, Seymour and Pease. He has also taught law at George Mason University. Professor Smith was the first Director of Capital's summer study abroad program in Greece, and from 1994 to 2000 served as co-Director of Capital's National Moot Court team with Professor Jeffrey Ferriell, winning six regional championships in the National Appellate Advocacy Competition or National Moot Court Competition. His teaching has included Election Law, Civil Procedure, Law & Economics, Jurisprudence, and Administrative Law.

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E-mail Professor Bradley A. Smith at [REDACTED]

Nelson Lund, Patrick Henry Professor of Constitutional Law and 2nd Amendment  
B.A., St. John's College; M.A., Catholic University; A.M. and Ph.D., Harvard  
University; J.D. University of Chicago

**Contact:**



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**Subject(s) Taught:**

Constitutional Law, Legislation

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**PATRICK HENRY PROFESSOR OF CONSTITUTIONAL LAW AND THE SECOND AMENDMENT NELSON LUND** has written widely in the field of constitutional law, including articles on constitutional interpretation, federalism, separation of powers, the Second Amendment, the Commerce Clause, the Speech or Debate Clause, the Equal Protection Clause, and the Uniformity Clause. In addition, he has published articles in the fields of employment discrimination and civil rights, the legal regulation of medical ethics, and the application of economic analysis to legal institutions and legal ethics.

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Since joining the faculty at George Mason, Professor Lund has taught Constitutional Law, Legislation, Federal Election Law, Employment Discrimination, State and Local Government, and seminars on the Second Amendment and on a variety of topics in Jurisprudence.

**ABIGAIL THERNSTROM**  
**VICE-CHAIR**

Senior Fellow, Manhattan Institute  
New York City, New York  
POLITICAL AFFILIATION: REPUBLICAN

Abigail Thernstrom is a Senior Fellow at the Manhattan Institute in New York, a member of the Massachusetts State Board of Education, and a commissioner on the United States Commission on Civil Rights. She received her Ph.D. from the Department of Government, Harvard University, in 1975.

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["Government Financing of Campaigns: Public Choice and Public Values,"](#) Cato Policy Analysis no. 448, August 26, 2002.

["Election Reform, Federalism, and the Obligations of Voters,"](#) Cato Policy Analysis no. 417, October 23, 2001.

["More Government For All: How Taxpayers Subsidize Anti-Tax Cut Advocacy,"](#) Cato Policy Analysis, July 10, 2001.

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["Mr. Smith Leaves Washington,"](#) *American Spectator (Online)*, August 24, 2005

["Happy Days,"](#) *Spectator.org*, June 9, 2005

["Your Blog Will Be Investigated Soon,"](#) *American Spectator*, May 10, 2005

["Playing the Irony Card,"](#) *Washington Times*, May 5, 2005

["Dial Down Corruption Fears: Media will expose lawmakers whose relatives don't deserve pay,"](#) *USA Today*, April 19, 2005

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# John C. Fortier

Research Fellow

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Fortier studies politics, the presidency, continuity of government, elections, the electoral college, election reform, and presidential succession and disability. He is the executive director of the Continuity of Government Commission, and is a weekly columnist for The Hill.

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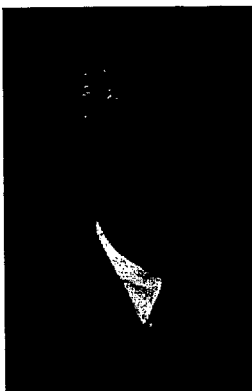
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E-mail Professor Bradley A. Smith at [REDACTED]

Nelson Lund, Patrick Henry Professor of Constitutional Law and 2nd Amendment  
B.A., St. John's College; M.A., Catholic University; A.M. and Ph.D., Harvard  
University; J.D. University of Chicago



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**Subject(s) Taught:**  
Constitutional Law, Legislation

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- [Working Papers](#)

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*Congressional Representation of Black Interests: Recognizing the Importance of Stability* (with Vincent Hutchings & Harwood McClerking) 66 *J. of Pol.* (2004)

*Racial Identity and Political Association: Why the Racial Gerrymandering Cases Violate the Associational Rights of Voters of Color*, 91 *Cal. L. Rev.* 1209 (received First Honorable Mention at the AALS Scholarly Paper Competition January 2003)

*Mixing Metaphors: Voting, Dollars, and Campaign Finance Reform* (book review) 2 *Elec. L. J.* 271 (2003)

*Constitutional Pluralism & Democratic Politics: Reflections on the Interpretive Approach of Baker v. Carr*, *C. L. Rev.* 1103 (2002)

*The Electoral College, The Right to Vote and Our Federalism: A Comment on a Lasting Institution*, (with L Fuentes-Rohwer) 29 *Fla. St. U. L. Rev.* 879 (2001) (symposium)

*Challenges to Racial Redistricting in the New Millennium: Hunt v. Cromartie as a Case Study* (with Luis Fuentes-Rohwer) 58 *Wash. & Lee L. Rev.* 227 (2001)

*Fourth Amendment Accommodations, (Un)Compelling Public Needs, and the Fiction of Consent* 2 *Mich. J. Race & L.* 461 (1997)

Non-Academic Publications

Should Single-Member Districting be Held Unconstitutional, February 5, 2004 Findlaw.com

Why the Federal Election Commission Should not Limit Contributions to Political Issue Organizations, April 2004 Findlaw.com

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## Guy-Uriel E. Charles

**Russell M. and Elizabeth M. Bennett Associate Professor of Law**  
Faculty Affiliate, Center for the Study of Political Psychology, University of Minnesota

Senior Fellow in Law in Politics, Institute for Race and Poverty,  
University of Minnesota Law School  
*Spring Arbor University, B.A. cum laude*  
*University of Michigan Law School, J.D.*

**Guy-Uriel E. Charles** joined the University of Minnesota in the Fall of 2000. He clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit and has taught as an Adjunct Professor at the University of Toledo School of Law prior to joining the University of Minnesota. He was Editor-in-Chief of the *Michigan Journal of Race & Law*.

Professor Charles teaches and writes in the areas of constitutional law, civil procedure, election law, law and politics, and race. His articles have appeared in *Constitutional Commentary*, *The Michigan Law Review*, *The Michigan Journal of Race and Law*, *The Georgetown Law Journal*, the *Journal of Politics*, the *California Law Review*, *The North Carolina Law Review*, among many others. He was the Stanley V. Kinyon Teacher of the Year 2002-2003 at the University of Minnesota Law School.

He was a member of the National Research Commission on Elections and Voting and the Century Four Working Group on Election Reform.

In the Spring of 2005, he will be the James S. Carpentier Visiting Professor of Law, at Columbia University of Law.

He is a frequent television, print, and radio commentator on issues relating to constitutional law, election law, campaign finance, redistricting, politics, and race.

### WORKS-IN-PROGRESS

Race, Representation, and Redistricting

Reexamining Section 5 of the Voting Rights Act (with Prof. Luis Fuentes-Rohwer)

### FORTHCOMING PUBLICATIONS

Regulating Section 527 Organizations (with Prof. Gregg Polsky) (forthcoming *George Washington Law Review*)

### PUBLICATIONS

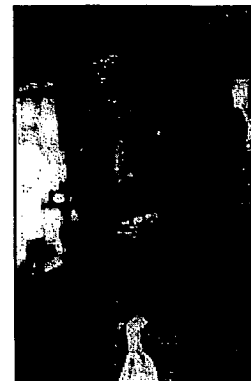
*Colored Speech: Crossburnings, Epistemics, and the Triumph of the Critics?*, 93 *Geo. L. J.* 575 (2005)

*Judging the Law of Politics*, 103 *Mich. L. Rev.* 1099 (2005)

*Law, Politics, and Judicial Review*, 31 *J. Legis.* 17 (2004)

*In Defense of Deference*, 21 *Const. Comment.* 133 (2004) (with Luis-Fuentes-Rohwer) (symposium)

*Colorblindness from the Original Position*, 78 *Tul. L. Rev.* 2009 (2004) (symposium)



**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson/EAC/GOV@EAC

11/01/2005 03:04 PM

cc

bcc

Subject Chron memo on Job and Tova

Here is the revised memo.

Checked the files- Tally Vote was initiated September 16 and was due back on September 20.

Job and Tova asked about the status of their signed contract on September 20. A series of e-mails were exchanged around September 22 regarding who would be overseeing their contract-(Gavin, Peg, etc.)

Carol Paquette sent several internal e-mails with the altered Statement of Work on the voting fraud and intimidation project, starting on September 21.

Sorry you feel awful- this place just about does you in every October 1

:-)

Hang in there

K



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

028178

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

08/16/2005 02:52 PM

To Carol A. Paquette/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
bcc Thomas R. Wilkey/EAC/GOV@EAC  
Subject Finishing touches on the Statement of Work for the Voter  
Fraud/Intimidation consultants

All-

This morning the Commissioners approved the Statement of Work for the Voter Fraud/Voter Intimidation project consultants, with the caveat that some additional language would be added and the SOW polished up.

Tom, Peg and I are scheduled to interview the first candidate tomorrow morning at 10:00 am and will need your edits to this SOW by COB today.

I am attaching the item again, just in case you don't have a copy. Since I have an appointment out of the office and will be leaving at 4:00 today, I ask that you get your changes and edits to Nicole so that she may enter them and get the revised copy to the candidate first thing in the morning.

Thanks for your input on this.



voterfraud project consultants.2.doc

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

028179



## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. In general “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), with the goal of promoting methods of voting and administering elections....”

Specifically, Section 241b 6 and 7 describes Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and
7. Identifying, deterring and investigation methods of voter intimidation.

Building on this HAVA reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of these issues to determine how the EAC might respond to them.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

## **Duties**

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.
2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, the consultants will develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

## **Special Considerations**

Work for Hire Agreement (insert language)

## **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project**

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Karen Lynn-Dyson/EAC/GOV  
07/01/2005 11:02 AM

To "Job Serebrov"  
[REDACTED]  
cc Juliet E. Thompson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
bcc Paul DeGregorio/EAC/GOV@EAC; Raymundo  
Martinez/EAC/GOV@EAC  
Subject Re: project

Job-

Thanks ever so much for following up. Indeed, the Commissioners have reviewed the issue and have agreed in principle, to an approach that would entail hiring a consultant or consultants to help the EAC study and frame the issues of voter fraud and intimidation.

The idea would be that after a period of time, the consultants, and, perhaps, a working group of the EAC, would make a series of recommendations on next steps for the agency to take regarding voter fraud and intimidation.

Thanks for your patience; I hope to have a definitive answer for you by mid-July at the latest.

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

028184

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"

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

028185

Karen Lynn-Dyson/EAC/GOV  
12/14/2006 01:36 PM

To Margaret Sims/EAC/GOV@EAC  
cc "Donetta Davidson" <Ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>, Juliet E. Thompson/EAC/GOV@EAC,  
bcc  
Subject Re: People For 

Peg, et.al-

I did not have any interaction with this group.

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

Margaret  
Sims/EAC/GOV

12/14/2006  
12:40 PM  
To Gracia Hillman/EAC/GOV@EAC  
cc "Donetta Davidson" <Ddavidson@eac.gov>, "Jeannie Layson" <jlayson@eac.gov>, Juliet E. Thompson/EAC/GOV@EAC, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, "Paul DeGregorio" <pdegregorio@eac.gov>, "Sheila Banks" <sbanks@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: People For Link

Commissioner Hillman:

PFAW was not represented on the Working Group for the Voting Fraud-Voter Intimidation research project. Also, I have had no communications with the organization about the study. I did work with Jeannie and Gavin on a response to PFAW's FOIA request for the study. Jeannie should have the final copy of that reply.

Peggy Sims

028186

Election Research Specialist

Gracia  
Hillman/EAC/GOV

12/14/2006 12:07  
PMDear Commissioner  
Hillman:

To "Paul DeGregorio" <pdegregorio@eac.gov>, "Donetta Davidson" <davidson@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  
t

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

028187





"MacSling"  
[REDACTED]  
05/08/2007 09:14 AM

To bhancock@eac.gov  
cc "Birdseye, Wally" [REDACTED]  
bcc  
Subject RE: CIBER's ITA Position

Brian, nice to meet you yesterday. I am not yet sure on the direction our Practice will grow with e-voting...

The abnormal and unacceptable length of time to get turnarounds on our certification submissions, and the changing standards such that we have to certify to different levels of work than Systest or Wyle, to get their same level of certification, has interfered with our customer relationships and caused our employees to be very nervous, such that they sought our permission to join Wyle while continue to support us on the State of NY work.

The part-time auditor assigned by your group to us is conflicted and has other work. While I agree our July 2006 documentation was deficient to prove the work we were doing in due course met existing Federal standards, we have spent tens of thousands of dollars and many months to stand up to a new level of documentation, which we believe has been made fully compliant (with the standards sent down for others) by late last year and exceeded in February, which work is yet to be decided upon- 10 weeks after our early submission to your request. After over a decade of dedication to this important work, it is criminal what CIBER has had to endure compared to others to get interim certification.

Had our accreditation been handled as Systest and Wyle, I doubt yesterday's hearing would have been convened to vilify either of us. The inflection point was last December, and we are all paying a price for the inaction and slow action thereto.

The EACs process in this matter has unfairly hung CIBER out to dry and incur damages there from. To reduce further risk, I would encourage the EAC to reply to our February submission asap, accredit us as we have exceeded the levels of criteria Systest and Wyle were subjected to, and move on to the important business of higher standards with NIST on all future accreditations.

Mac Slingerlend

-----Original Message-----  
From: bhancock@eac.gov [mailto:bhancock@eac.gov]  
Sent: Friday, May 04, 2007 2:42 PM  
To: MacSling  
Subject: Re: CIBER's ITA Position

Tuesday is fine.

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "MacSling" [REDACTED]  
Sent: 05/04/2007 02:27 PM CST  
To: "Birdseye, Wally" [REDACTED]; Brian Hancock

Jeannie Layson /EAC/GOV  
12/13/2006 02:52 PM

To pdegregorio@eac.gov, ghillman@eac.gov,  
ddavidson@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, ggilmour@eac.gov,  
psims@eac.gov  
bcc

Subject Fw: Your Dec. 11 Posting

History: This message has been replied to.

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" [REDACTED]

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](mailto: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

028190

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  
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  
I [REDACTED]  
[REDACTED]  
Los Angeles, CA 90015-1211  
[REDACTED]  
[REDACTED]  
[REDACTED]




Gracia Hillman /EAC/GOV

12/13/2006 03:11 PM

To Jeannie Layson/EAC/GOV@EAC

cc ddavidson@eac.gov, ggilmour@eac.gov,  
jthompson@eac.gov, pdegregorio@eac.gov,  
psims@eac.gov, twilkey@eac.gov

bcc

Subject Re: Fw: Your Dec. 11 Posting 

Yes, we should have him post your response.

At least he acknowledged your response and admits that these are his opinions and that he does not think of himself as a journalist.

Jeannie Layson /EAC/GOV

12/13/2006 02:52 PM

To pdegregorio@eac.gov, ghillman@eac.gov, ddavidson@eac.gov

cc twilkey@eac.gov, jthompson@eac.gov, ggilmour@eac.gov, psims@eac.gov

Subject Fw: Your Dec. 11 Posting

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" 

12/13/2006 02:44 PM

To jlayson@eac.gov

cc


Subject Re: Your Dec. 11 Posting

**Deliberative Process  
Privilege**

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

History:  This message has been replied to.

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."

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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

028194

**More on FL-13, and a Role for the EAC?**

When I saw this headline on the *Sarasota Herald Tribune* web page, I 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)

Karen Lynn-Dyson/EAC/GOV

02/17/2005 04:02 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, DeForest Soaries  
Jr./EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC  
bcc

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**



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

028196

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.



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.

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.



Raymundo  
Martinez/EAC/GOV  
03/27/2005 05:47 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, DeForest Soaries  
Jr./EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC

cc

bcc

Subject Century Foundation Press Release

Commissioners:

Another group has been formed to look at election administration reform (see below)...just thought you would want to know.

Ray.

**The Century Foundation Assembles Working Group to Help States Improve Voting Process**

3/23/2005

Release Type: Informational

---

**Contact**

Christy Hicks [REDACTED]

FOR IMMEDIATE RELEASE

*Group Will Make Recommendations that Balance Ballot Integrity with Voting Rights and Accessibility*

March 23, 2005, New York City - In an effort to improve future elections, The Century Foundation has created a Post-2004 Working Group on Election Reform. This bipartisan group of prominent election law and voting reform experts will produce concrete policy options states can follow in order to improve the voting process.

The members of the working group are: Tova Wang, senior program officer and democracy fellow, The Century Foundation (executive director); Doug Chapin, director, Electionline.org; Norm Ornstein, resident scholar, American Enterprise Institute; Guy-Uriel E. Charles, associate professor of law, University of Minnesota Law School; Edward B. Foley, professor of law and director, Election Law@Moritz, Moritz College of Law, Ohio State University; Samuel Isacharoff, visiting professor at NYU School of Law and Harold R. Medina Professor in Procedural Jurisprudence, Columbia University School of Law; Martha Kropf, assistant professor of political science, University of Missouri, Kansas City; Roy Schotland, professor of law, Georgetown University Law Center; and Dan Tokaji, assistant professor of law and associate director, Election Law@Moritz, Moritz College of Law, Ohio State University. Download [working group member bios](#) (PDF).

The 2004 presidential election was the first big test of the 2002 Help America Vote Act (HAVA). Enacted in the wake of the deeply flawed 2000 election, the law was passed in an effort to both improve the voting process and to increase voter access. However, the results on Election Day were mixed at best. While there were improvements in the voting process in a number of jurisdictions, the ways in which many states carried out the law's mandates

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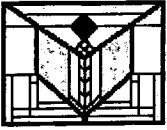
produced a number of unintended consequences, resulting in allegations of fraud and voter disenfranchisement.

The working group's mission is to promote an election system that balances ballot integrity with voting rights and accessibility. The group will assess the key provisions of HAVA, analyze the ways in which they were implemented in 2004, and provide guidelines for how they ought to be implemented by the states in the future. In addition, the working group will analyze how states are preparing to comply with HAVA requirements that have implementation deadlines at the end of this year. They plan to provide the best policy options for states to meet these mandates in a report scheduled for release in late spring.

"While the goals of HAVA were generally positive, the law turned out to be deficient in many areas and implementation by the states was flawed," said Tova Wang, executive director of the working group. She noted that a variety of lawsuits have been filed throughout the country about the implementation of HAVA, and advocates and government officials continue to spar over interpretations of the law's requirements and flaws in the voting process. "The disputes almost universally revolve around one core principle: the competing values of ensuring ballot integrity while maintaining wide voting accessibility. We will take a very practical approach to solving the problems that HAVA may have inadvertently created and provide realistic approaches the states can take in order to fulfill the promise that HAVA originally intended," she added.

The Century Foundation has been at the forefront of efforts to reform the voting system since the issue achieved national prominence following the 2000 presidential contest. In 2001, the foundation cosponsored The National Commission on Election Reform, cochaired by former Presidents Gerald Ford and Jimmy Carter. The final report of that commission served as the model for important measures in the Help America Vote Act. Information on issues related to election reform is available at [www.tcf.org](http://www.tcf.org).

For more information about the Working Group or election reform issues, contact Christy Hicks [REDACTED]



DeForest Soaries  
Jr./EAC/GOV  
03/27/2005 07:57 PM

To Raymundo Martinez/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Century Foundation Press Release

Misery loves company.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Raymundo Martinez

**Sent:** 03/27/2005 04:47 PM

**To:** Gracia Hillman; Paul DeGregorio; DeForest Soaries Jr.; Raymundo Martinez

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028204

Medina Professor in Procedural Jurisprudence, Columbia University School of Law; Martha Kropf, assistant professor of political science, University of Missouri, Kansas City; Roy Schotland, professor of law, Georgetown University Law Center; and Dan Tokaji, assistant professor of law and associate director, Election Law@Moritz, Moritz College of Law, Ohio State University. Download [working group member bios](#) (PDF).

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For more information about the Working Group or election reform issues, contact Christy Hicks at [\[REDACTED\]](#).





Gracia Hillman /EAC/GOV  
03/28/2005 01:20 AM

To Raymundo Martinez/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV, DeForest Soaries Jr./EAC/GOV  
cc  
bcc

Subject Re: Century Foundation Press Release

I am not surprised although I am a little surprised at who is on this working group.

Ray, Did the folks at Moritz mention this to you?

-----  
Sent from my BlackBerry Wireless Handheld

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

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**Sent:** 03/27/2005 04:47 PM  
**To:** Gracia Hillman; Paul DeGregorio; DeForest Soaries Jr.; Raymundo Martinez  
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For more information about the Working Group or election reform issues, contact Christy Hicks at [christy@centuryfoundation.org](mailto:christy@centuryfoundation.org).

# PURCHASE ORDER TERMS AND CONDITIONS

## 552.229-70 FEDERAL, STATE, AND LOCAL TAXES (APR 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

## 552.210-79 PACKING LIST (DEC 1989)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate (1) Name and address of consignor; (2) Name and address of consignee; (3) Government order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number and (2) the term "Credit Card".

## 52.232-1 PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if: (a) The amount due on the deliveries warrants it; or (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

## 52.232-8 DISCOUNTS FOR PROMPT PAYMENT (APR 1989)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the invoice on which an electronic funds transfer was made.

## PROMPT PAYMENT

Prompt Payment clause 52.232-25 is incorporated in this contract by reference. The clause contains information on payment due date, invoice requirements, constructive acceptance and interest penalties. Certain portions of the clause regarding payment due date, invoice requirements, and constructive acceptance have been extracted for your convenience. All days referred to in the extracts below are calendar days.

(a)(2) . . . The due date for making invoice payments by the designated payment office shall be the later of the following two events:

- (i) The 30th day after the designated billing office has received a proper invoice from the Contractor.
- (ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor . . .

(a)(4) . . . An invoice shall be prepared and submitted to the designated billing office specified in the contract. A proper invoice must include the items listed in . . . (i) through . . . (viii) . . . If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office . . . Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor . . .

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms), Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be made (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

NOTE: Invoices must include the ACT number (block 4) and shall be submitted in an original only, unless otherwise specified, to the billing office designated in block 24 to receive invoices. The "remittance to" address must correspond to the remittance address in block 12.

(a)(6)(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in block 20) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality or contractor compliance with a contract provision . . .

## 52.222-40 SERVICE CONTRACT ACT OF 1965, AS AMENDED - - CONTRACTS OF \$2,500 OR LESS (MAY 1989)

Except to the extent that an exception, variation, or tolerance would apply if this contract were in excess of \$2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under Section 6 a) (1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965 are contained in 29 CFR Part 4.

## 52.222-41 SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)  
(52.222-41 and 52.222-42 apply to service contracts when the amount exceeds \$2,500).

The GSA Form 2166, Service Contract Act of 1965 and Statement of Equivalent Rates for Federal Hires is attached hereto and made a part hereof.

## 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates the following clauses by reference with the same force and effect as if they were given in full text. Upon request the Contracting Officer will make their full text available:

## FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

Applicable to purchase orders for supplies or services:

- 52.203-1 Officials Not to Benefit (APR 84)
- 52.203-3 Gratuities (APR 84)
- 52.203-5 Covenant Against Contingent Fees (APR 84)
- 52.203-6 Restriction on Subcontractor Sales to the Government (JUL 85)
- 52.203-7 Anti-Kickback Procedures (OCT 88)
- 52.212-9 Variation in Quantity (APR 84)  
(In the preceding clause, the permissible variations are stated in the schedule.)
- 52.222-3 Convict Labor (APR 84)
- 52.222-26 Equal Opportunity (APR 84)(Applies when amount exceeds \$10,000.)
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 84)(Applies when amount exceeds \$10,000.)
- 52.222-36 Affirmative Action for Handicapped Workers (APR 84)(Applies when amount exceeds \$2,500.)
- 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 88)(Applies whenever clause 52.222-35 is included.)
- 52.223-6 Drug Free Workplace (JUL 90)(Applies if contract is awarded to an individual.)
- 52.225-3 Buy American Act - Supplies (JAN 89)
- 52.225-11 Restrictions on Certain Foreign Purchases (MAY 92)
- 52.232-25 Prompt Payment (SEP 92)
- 52.233-1 Disputes (DEC 91)
- 52.233-3 Protest After Award (AUG 89)
- 52.246-1 Contractor Inspection Requirements (APR 84)
- 52.249-8 Default (Fixed-Price Supply and Service)(APR 84)

Applicable to purchase orders for supplies:

- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation - (MAR 86)(Applies when amount is between \$2,500 and \$10,000.)
- 52.222-20 Walsh-Healey Public Contracts Act (APR 84)(Applies when amount exceeds \$10,000.)
- 52.243-1 Changes - Fixed Price (AUG 87)
- 52.249-1 Termination for Convenience of the Government (Fixed Price)(Short Form)(APR 84)

Applicable to purchase orders for services:

- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation - (MAR 86)(Applies when amount exceeds \$2,500.)
- 52.243-1 Changes - Fixed Price (APR 84) - Alt. II
- 52.249-4 Termination for Convenience of the Government (Services)(Short Form)(APR 84)

028208

(i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

- My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Commissioner Davidson also asked that I ask some questions related to the first bullet, above, specifically relating to the comparison of states without validation that the state's turn out for 2004 was "normal" for that state as opposed to an anomaly.

Last, Commissioner Davidson asked that you all coordinate your selected questions to avoid having two commissioners wanting to ask the same question.

Please let me know if you have any questions or concerns about these questions or if I can explain my reasoning behind the questions.

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

**Deliberative Process  
Privilege**

012820

Juliet E. Hodgkins/EAC/GOV  
02/06/2007 03:53 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R.

cc

bcc

Subject Questions for Eagleton

Commissioners,

Commissioner Davidson asked that I forward to each of you the following questions that I drafted at her request last week. She also asked that I let you know that she is interested in asking questions 3, 5, and 7.

1. What is meant by "statistically significant"? Please explain in plain language when a result is considered statistically significant. Also, please provide an academic definition of that term. How did you calculate the mean and standard deviations from the mean?
2. What data was used to derive these research findings?
3. Did you attempt to find information or data related to elections prior to 2004 in states that have voter identification requirements?
4. What other variables other than voter identification were tested? Contested race? Historical voter turnout? Weather? Media attention to the area? Candidate activities/campaign?
5. What was the impact (positive or negative) of these other factors on voter turnout?
6. How did you control these variables/factors when measuring the impact of voter ID on voter turnout or on prospective voter turnout? For example, did you only apply the factor to like circumstances – similar historical turnout, same level of contention in the races of the ballot, etc.
7. Would the study and your conclusions have been more reliable if additional data had been analyzed? Data such as voter turn out in states that have had voter ID in past Federal elections?
8. What data did you use to identify voter turnout?
9. What data did you use to identify whether people or groups of people were more or less likely to vote when identification is required?
10. Why did you use census data as opposed to data on registered voters? Doesn't census data also include information from people who are not registered voters and people who are not even eligible to be registered voters?

In addition to the questions above, I provided the following feedback to Commissioner Davidson concerning the draft report provided by Eagleton:

- I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the statistician actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomaly for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.
- My second concern is how they (statistically speaking) differentiate between a minimum requirement

1128211

Margaret Sims/EAC/GOV  
09/25/2006 12:36 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, twilkey@eac.gov  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Preparation for Vote Fraud Conference in Utah

History:

 This message has been replied to.

Matt (and Amy) are working on a speech for the Chairman to deliver at the Vote Fraud conference in Utah at the end of the week. Matt has asked for the consultants' definition of vote fraud/voter intimidation and the draft recommendations. As neither have been through full Commission review, I would like to speak with one or both of you before I drop this information in any one Commissioner's lap. Matt is looking for this information today. FYI, attached are copies of the consultants' definition and the draft recommendations from the consultants and others from the working group. Also attached is a summary of concerns expressed by the working group. --- Peggy



Fraud Project Definition-rev 6-27.doc



RECOMMENDATIONS - final2.doc



Working Group Recommendations final.doc



Key Working Group Comments and Observations AND concerns final.doc

028212

Margaret Sims/EAC/GOV  
09/27/2006 12:51 PM

To bwhitener@eac.gov  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Status Report on Voting Fraud-Voter Intimidation Study

History:  This message has been replied to and forwarded.

Bryan:

An electronic copy of the status report is attached, as requested for the USA Today inquiry. The status report includes the attachment listing the Working Group members. I suggest that you check to ensure that I have protected the copy against any manipulation, and protect it yourself if I have not, before sending it out to anyone. --- Peggy



EAC Boards VF-VI Status Report.doc

028213

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

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



028214

Margaret Sims/EAC/GOV  
07/17/2006 10:15 AM

To jthompson@eac.gov  
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Voting Fraud-Voter Intimidation Draft Report

Julie:

I received pieces of the draft final report on voting fraud-voter intimidation this morning. If it is OK with you, I'll hold it until all I have all of the pieces, so that you can review it as a whole document. --- Peggy

028215

Jeannie Layson/EAC/GOV  
03/13/2006 06:09 PM

To klynndyson@eac.gov  
cc  
bcc

Subject Fw: Standards Board and Study on Voting Fraud

History: This message has been replied to.

Karen,

I need info from you for question number 2.... Thanks.

----- Forwarded by Jeannie Layson/EAC/GOV on 03/13/2006 05:10 PM -----

"ROY SALTMAN" [REDACTED]

03/13/2006 05:01 PM

To "Jeannie Layson" <jlayson@eac.gov>  
cc  
Subject Standards Board and Study on Voting Fraud

Dear Ms. Layson:

I have two questions about the 2005 Annual Report that you gave me.

(1) Who are, currently, the nine members of the Executive Board of the Standards Board?

(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?

Regards,  
Roy Saltman



Laiza N. Otero/EAC/GOV  
02/24/2006 08:56 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Tova Wang/Job Serebrov/Improving Election Data  
Collection Project--FY06 Budget

History: This message has been replied to.

Sounds good. Would later this afternoon work for you? Right now I'm working on the management guidelines with Brian. Let me know, thank you!

Laiza N. Otero  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202)566-1707  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

02/24/2006 08:41 AM

To Laiza N. Otero/EAC/GOV@EAC  
cc  
Subject Fw: Tova Wang/Job Serebrov/Improving Election Data  
Collection Project--FY06 Budget

FYI-

On the budget figure for Improving Election Data Collection

Also, when you're ready let's go through more of the detail on your proposed agenda.

For example, I'd like for us to have some presentations (brief) on various subject areas, so that folks have a basis for their discussion and conclusions.

As we discussed, I think we also will want to have some breakout working groups which focus on particular issues/areas of concern.

Let me know when you're ready to pursue.

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 02/24/2006 08:34 AM -----

Diana Scott/EAC/GOV  
02/23/2006 05:04 PM

To Thomas R. Wilkey/EAC/GOV@EAC,  
klynndyson@eac.gov@EAC, Margaret  
Sims/EAC/GOV@EAC

**Deliberative Process  
Privilege**

028217



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

History: This message has been forwarded.

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

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.

Paul DeGregorio  
Vice 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

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
11/09/2005 12:40 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft Letter to Linda Lamone

History: This message has been replied to.

Tom's response was that the letter looked fine. Setting aside NAS, I wanted to make certain that pilot projects on list sharing were a part of our thinking on this study, irrespective of who handles the project for us. You will notice that I did not mention NAS in my letter to Linda.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 11/08/2005 05:22 PM  
**To:** Thomas Wilkey  
**Cc:** Sheila Banks; Bert Benavides  
**Subject:** Re: Draft Letter to Linda Lamone

Tom-

I'll defer to you on this one since I'm not at all aware of how things have been left with NAS ( what , if anything, has been said to Herb Lin) and what the timelines are for possibly working with him on the technology refresh project .

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

028218

Carol A. Paquette/EAC/GOV  
09/21/2005 07:45 PM

To klynndyson@eac.gov@EAC  
cc  
bcc

Subject SOW for voting fraud consultants

History

This message has been forwarded.

Karen -

Did some tightening up on language in this SOW. Let me know if you have any changes you want to make ASAP so this can go in for contract processing tomorrow. Thanks!



Wang consulting contract.doc

Carol A. Paquette  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

028219



"Job Serebrov"

09/06/2005 11:42 AM

To twilkey@eac.gov, klynndyson@eac.gov, [REDACTED]

cc [REDACTED], jthompson@eac.gov

bcc

Subject Draft Schedule Proposal for Vote Fraud Group

History: This message has been forwarded.

I have attached a draft proposed schedule of events for our discussion today. Please keep in mind that this is only a proposal but I thought that we needed somewhere to start from.

Regards,



Job Task Contractor Deadline EAC

028226

**Deliberative Process  
Privilege**

Carol A. Paquette/EAC/GOV  
09/01/2005 06:41 PM

To gvogel@eac.gov@EAC  
cc klyndyson@eac.gov@EAC  
bcc  
Subject reference materials for vote count/recount RFP

Gaylin -

There are 3 files of reference materials for this RFP: the spreadsheet of vote definitions and two summaries of statutory provisions on recounts (which are not consistent in information provided, e.g., one provides statutory language without commentary - the other provides summarized commentary without statutory language). We need a brief paragraph to accompany each to explain what the Offeror can glean from it. For example, the spreadsheet on vote definitions has references in it such as "See pdf of Arkansas statutes in file.", "There is a pdf of the manual in the document folder", "See .doc in file." "I was not able to find copies of these manuals." So this is clearly an internal working draft, not really a final product. How would the Offeror use this in preparing their proposal? Similarly, the two disparate summaries of statutes on recounts - we need to explain that this is a preliminary collection of information and that the two files are different in terms of content. Again, how would the Offeror use this information in preparing their proposal? Also, the title that printed out on first file citing statutory language is not correct and needs to be changed. It currently reads "Voting System Certification by State as of April 22, 2005." There is no heading on the second file.

This is a voluminous amount of information. We need to think about whether it is needed for the preparation of proposals. I will be considering this point this evening when I review the SOW and proposal instructions. Would appreciate your thoughts on this tomorrow.

Carol A. Paquette  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

028221



Margaret Sims/EAC/GOV  
08/16/2005 04:45 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc  
bcc  
Subject Suggested Changes for Voting Fraud SOW

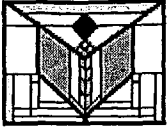
Karen and Nicole:

Please see suggested changes in the attached (highlighted as tracked changes). In some cases, I could only note that we should insert something to address a particular issue. I don't have specifics for the inserts because we have not had time to discuss or confirm exactly what should be added. --- Peggy



voterfraud project consultants.2changes.doc

028222



Adam Ambrogi/EAC/GOV

04/21/2005 05:29 PM

To klynndyson@eac.gov

cc gvogel@eac.gov

bcc

Subject Voter Fraud Research

You've probably seen this already, but I wanted to toss it your direction. It's an interesting report on the topic that Demos did last year. Might not be a bad starting point for ideas, ect.

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 EDR\_-\_Securing\_the\_Vote.pdf

028223

**Deliberative Process  
Privilege**

Margaret Sims/EAC/GOV  
12/14/2006 12:40 PM

To Gracia Hillman/EAC/GOV@EAC  
cc "Donetta Davidson" <Ddavidson@eac.gov>, "Jeannie Layson" <jlayson@eac.gov>, Juliet E. Thompson/EAC/GOV@EAC, "Karen Lynn-Dyson"  
bcc  
Subject Re: People For 

Commissioner Hillman:

PFAW was not represented on the Working Group for the Voting Fraud-Voter Intimidation research project. Also, I have had no communications with the organization about the study. I did work with Jeannie and Gavin on a response to PFAW's FOIA request for the study. Jeannie should have the final copy of that reply.

Peggy Sims  
Election Research Specialist

Gracia  
Hillman/EAC/GOV

12/14/2006 12:07  
PMDear Commissioner  
Hillman:

To "Paul DeGregorio" <pdegregorio@eac.gov>, "Donetta 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  
t

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

028224



"Job Serebrov" [REDACTED]

08/09/2005 09:24 PM

To klynndyson@eac.gov

cc twilkey@eac.gov, nmortellito@eac.gov

bcc

Subject Re: Commission

History

This message has been forwarded.

Karen:

Please call me on Friday August 19th at 501.374.2176.

Talk to you then,

Job

--- klynndyson@eac.gov wrote:

> Confirmed for Friday August 19, 2005 at 11:30 AM  
> EDT.  
>  
> We will call you at a number you will provide at a  
> later date.

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

>  
>  
>  
> "Job Serebrov" [REDACTED]  
> 08/04/2005 07:41 PM

> To  
> klynndyson@eac.gov  
> cc

> Subject  
> Re: Commission

>  
>  
>  
>  
>  
> 11:30 eastern or central time?

>  
>  
>  
> --- klynndyson@eac.gov wrote:

> > Job-

> > We would like to tentatively schedule our

028225

> > conversation for August at 11:30  
> > or August 19 at 11:30.  
> >  
> > We will work diligently to get a description of  
> the  
> > consulting assignment  
> > to you by mid-week next week.  
> >  
> > (Please remember that I am out of the office next  
> > week so be certain to  
> > reply to all on this e-mail.)  
> >  
> > 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  
> >  
> >  
> >  
> > "Job Serebrov"~~\_\_\_\_\_~~  
> > 08/02/2005 04:30 PM  
> >  
> > To  
> > klynndyson@eac.gov  
> > cc  
> >  
> > Subject  
> > Re: Commission  
> >  
> >  
> >  
> >  
> >  
> > Karen:  
> >  
> > It could take me until Friday to give you an  
> answer.  
> > I  
> > am waiting for a response to know whether and when  
> I  
> > will be in Wisconsin. If I go, it will be by car.  
> I  
> > will let you know as soon as I can.  
> >  
> > Job  
> >  
> > --- klynndyson@eac.gov wrote:  
> >  
> > > Job-  
> > >  
> > > I write to see if you would be available on  
> August  
> > > 16 or August 17 at

> > > 10:30 AM to speak, for about one hour, with Tom  
> > > Wilkey, EAC's Executive  
> > > Director, and me, about the consulting work  
> > related  
> > > to our voter fraud and  
> > > intimidation project.  
> > >  
> > > Thanks for letting me know your availability.  
> > >  
> > > I will be certain to get you a Statement of Work  
> > > before the end of this  
> > > week.  
> > >  
> > > 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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028227

Attorney-Client  
Privilege

Tamar Nedzar/EAC/GOV

08/22/2005 04:09 PM

To Margaret Sims/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC

cc Karen Lynn-Dyson/EAC/GOV@EAC

Subject Employment Contracts for RFP Consultants 

Please see the attached documents for RFP project consultants. Karen asks that you revise and edit the documents as soon as you are able. Please send revised documents to Karen.

Thank you for your assistance.

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2256  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)



Gaylin Vogel Adam Ambrogi 8\_22.doc



Marta Casper 8\_22.doc



Qwen Hoffman 8\_22.doc Richard Dickerson 8\_22.doc

028228



08/26/2005 04:48 PM

To klynndyson@eac.gov  
cc  
bcc  
Subject Re: Kick off activities for the EAC Voting fraud/voter intimidation project

History: This message has been forwarded.

Hi Karen,

I'm actually going on vacation next week. I'll do my best to be available by cell phone whichever day works better for everyone -- [REDACTED]. Also, the 12th was the one day I mentioned might be difficult for me that week, but if it is the only possibility I will rearrange my schedule. Keep me posted.

Thanks for everything and hope you have a great weekend. Tova  
----- Original Message -----

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

**To:** [sda@eac.gov](mailto:sda@eac.gov); [wang@eac.gov](mailto:wang@eac.gov); [serebrov@eac.gov](mailto:serebrov@eac.gov); [REDACTED]

**Cc:** [twilkey@eac.gov](mailto:twilkey@eac.gov); [nmortellito@eac.gov](mailto:nmortellito@eac.gov); [jthompson@eac.gov](mailto:jthompson@eac.gov)

**Sent:** Friday, August 26, 2005 3:32 PM

**Subject:** Re: Kick off activities for the EAC Voting fraud/voter intimidation project

All-

Although Tom Wilkey and I are still working to process each of your contracts on this project, we would like to tentatively schedule an in-person meeting on September 12, here in Washington.

In the meantime, I'd like to propose that we all have a short teleconference call next Wednesday or Thursday at 1:00 PM to begin to talk through the scope of this project and the respective roles and responsibilities each of you might take on.

Could you let me know your availability for a 45 minute call on August 31 or September 1 at 1:00?

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

028229



Attorney-Client  
Privilege



"Job Serebrov"  
[REDACTED]

09/12/2005 10:14 AM

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

cc

bcc

Subject Steve's replacement

History:

↩ This message has been replied to.

Karen:

I want to put in my two cents on Steve's replacement. I am concerned with the timing of all of this and whether we will have to start the process all over. As I see it you can replace Steve with another politically neutral or you could have Tova and I do the project and place one or more of those Steve suggested as replacements on a working group.

One comment on the working group. I do not necessarily agree with Tova's suggested list. I indicated to Tova that I would need to see a bio on each of those she listed, stressing electoral experience and an indication of whether the person agreed to be on the working group. Upon reflection and given the need to keep all of these groups politically balanced, I think that those working on the project (Tova, me, and anyone else) should each pick two or three people for the working group and submit those names to the Commission for vetting and approval.

What do you think about all of this?

Job

Attorney-Client  
Privilege



"Job Serebrov"  
[REDACTED]

09/13/2005 04:02 PM

To klynndyson@eac.gov

cc

bcc

Subject Re: Consulting fees

Karen:

I sent Nicole, in response to her question on this issue, the information that before taking the federal judicial clerkship I was charging \$175 per hour but now would charge \$200 per hour. However, I did some calculations for her and figured that this may not be the way to arrive at a compensation figure because at 15 hrs per week for 4 months=\$48,000 and at 20 hrs per week for 4 months=\$60,000. If Tova's figures are similar, it could exceed the budget.

Additionally, both Tova and I feel we needed our travel costs covered given fuel prices for plane travel or gas prices for car travel, not to mention hotels and food. Travel costs would also have to be estimated for any interviews that we do with and for bringing the working group to a central location.

Have you and Tom decided to replace Steve or just to have Tova and I do this?

I hope this helps.

Regards,

Job

Attorney-Client  
Privilege



"Tova Wang" <[REDACTED]>

09/16/2005 01:46 PM

To "Job Serebrov" <[REDACTED]>, "Karen Lynn  
Dyson" <klynndyson@eac.gov>

cc

bcc

Subject RE: Article

History:

↳ This message has been forwarded.

I'm sure it won't surprise you to know that I would want to see an independent analysis before coming to any conclusions. It often turns out --as it did in Washington -- to be bad lists and administrative/poll worker errors that cause the disparities. But I defer judgement.

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

From: Job Serebrov [mailto:[REDACTED]]  
Sent: Friday, September 16, 2005 12:37 PM  
To: tova Wang; Karen Lynn Dyson  
Subject: Article

I hope you already caught this. We have similar problems in Arkansas.

Job

"Among Voters in New Jersey, G.O.P. Sees Dead People"  
The New York Times offers this report, which begins: "  
The joke has long been that dead people vote in Hudson  
County, New Jersey's legendary enclave of machine  
politics. But now the joke may be on New Jersey,  
according to a new analysis of voter records by the  
state's Republican Party.

Comparing information from county voter registration  
lists, Social Security death records and other public information,  
Republican officials announced on Thursday that 4,755 people who were listed  
as deceased appear to have voted in the 2004 general election. Another 4,397  
people who were registered to vote in more than one county appeared to have  
voted twice, while 6,572 who were registered in New Jersey and in one of  
five other states selected for analysis voted in each state."

028232



"Job Serebrov"  
[REDACTED]

09/16/2005 01:37 PM

To "tova Wang" [REDACTED] "Karen Lynn Dyson"  
<klynndyson@eac.gov>

cc

bcc

Subject Article

History:

 This message has been replied to.

I hope you already caught this. We have similar problems in Arkansas.

Job

"Among Voters in New Jersey, G.O.P. Sees Dead People"  
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Comparing information from county voter registration lists, Social Security death records and other public information, Republican officials announced on Thursday that 4,755 people who were listed as deceased appear to have voted in the 2004 general election. Another 4,397 people who were registered to vote in more than one county appeared to have voted twice, while 6,572 who were registered in New Jersey and in one of five other states selected for analysis voted in each state."

028233

Attorney-Client  
Privilege

GMHILLMAN  
Sent by: Gracia Hillman  
10/26/2005 06:29 PM

To "Hans.von.Spakovsky@usdoj.gov"  
<Hans.von.Spakovsky@usdoj.gov>@GSAEXTERNAL  
cc "bkaufman@usdoj.gov"  
"christophert@usdoj.gov"  
<christophert@usdoj.gov>, ddavidson@eac.gov,  
bcc Karen Lynn-Dyson/EAC/GOV

Subject Re: Research Grants - Response 

History:  This message has been replied to.

Dear Hans:

I am writing in response to your email in which you took exception to our retaining Ms. Tova Wang as a part-time consultant to help EAC explore the issues of voter fraud and voter intimidation. I know that you have heard directly from Vice Chairman DeGregorio and Commissioner Martinez on the matter but I thought it important that I write back to make certain that everyone had the same information.

As you now know, Ms. Wang is only one consultant who is working with us on these issues. When EAC determined that we should explore our options on how to study the issues of voter fraud and voter intimidation, as required under HAVA Section 241 (b), we made a conscious decision to retain consultants who would work part-time for a defined and limited period of time to provide broad and diverse perspectives, across the political spectrum, from right to left and including the middle.

EAC conducted broad outreach to identify a strong pool of consultant candidates. We reached agreement to retain 3 highly qualified people -- Stephen Ansolabehere, Job Serebrov and Tova Wang -- to work with us as we try to determine the scope of any project we might do on these issues.

Unfortunately, Dr. Ansolabehere's teaching assignments unexpectedly precluded him from being able to work as a part-time consultant but he has expressed his desire and in fact has agreed to continue working with us in an unpaid capacity as we explore our options and frame the issues. In the meantime, Mr. Serebrov and Ms. Wang have agreed to provide the consultant services that we sought. We believe that all three individuals will bring great value, careful thought and important perspectives to our work on these issues.

I hope this clarifies this part of EAC's extensive research and study agenda. EAC engages thoughtful deliberation and undertakes careful consideration of all of its activities. We value inclusiveness and know that we are best served when we have broad and diverse perspectives to inform our work. I am happy to talk with you at any time that you might have questions or concerns about our work.

Best Regards,

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)

CONFIDENTIALITY NOTICE: This email message is from a federal agency. 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

028234

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 message and please delete this message from your computer.

Attorney-Client  
Privilege



Paul DeGregorio/EAC/GOV  
10/25/2005 05:07 PM

To Karen Lynn-Dyson/EAC/GOV  
cc  
bcc  
Subject Fw: Research Grants

History:  This message has been replied to.

see e-mail traffic below

--- Forwarded by Paul DeGregorio/EAC/GOV on 10/25/2005 05:07 PM ---



"Hans.von.Spakovsky@usdoj  
.gov"  
<Hans.von.Spakovsky@usdo  
j.gov>  
10/19/2005 09:49 AM

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>  
cc  
Subject RE: Research Grants

perhaps if the Board of Advisors were kept better informed, I would not have been put into this position.

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

From: pdegregorio@eac.gov [mailto:pdegregorio@eac.gov]  
Sent: Tuesday, October 18, 2005 5:18 PM  
To: von Spakovsky, Hans (CRT)  
Subject: Re: Research Grants  
Importance: High

Hans,

I wish you would have shown us the decency to have spoken to someone at the EAC before you sent this e-mail. Had you done so, you might have discovered that Ms. Wang was paired with Job Serebrov, a conservative attorney who, like you, has served on a local election board (Washington, Co, AK -Fayetteville). He has also worked on voting issues and election law in his practice, including voter fraud. He was counsel to the Arkansas GOP on ballot integrity issues and was the ballot protection specialist for Mike Huckabee in his campaign for Lt. Governor. In addition, Job formed and ran "Arkansans for Fair Elections", a non-partisan group that looked to investigate and prevent voter fraud issues. He headed that group for 8 years. Job served the Republican Party of Arkansas as the Chairman of the Committee for the Revision of the State Constitution.

Thor Hearne called me last week to indicate that Job had called him to be on the working group that Job and Ms. Wang are putting together to look at the voter fraud/voter intimidation issues.

Job was recommended to the EAC for this work by Julie Thompson. His references included two US 8th Circuit judges appointed by GOP presidents: Morris Arnold and Lavenski Smith.

You may recall that the Advisory Board made it clear to the EAC that they thought the Voter Fraud/Voter Intimidation issues should be studied together. That's why Ms. Wang has been paired with Mr. Serebrov to do

028236

this study.

Julie tells me that she had a wide-ranging discussion with you last week but you never brought this issue up. It's too bad, as it may have prevented you from sending an e-mail to so many people that contains only half the story.

Paul DeGregorio  
Vice 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

"Hans.von.Spakovsky@usdoj.gov" <Hans.von.Spakovsky@usdoj.gov>  
10/18/2005 03:45 PM

To

"gmhillman@eac.gov" <gmhillman@eac.gov>, "rmartinez@eac.gov" <rmartinez@eac.gov>, "pdegregorio@eac.gov" <pdegregorio@eac.gov>, "jthompson@eac.gov/twilke", "ddavison@eac.gov" <ddavison@eac.gov>

cc

"christophert@eac.gov" <christophert@eac.gov>, "bkaufman@cco" <bkaufman@cco>, "dlewis@eac.gov" <dlewis@eac.gov>, "tjsthree" <tjsthree>, "wrklinerjr@eac.gov" <wrklinerjr@eac.gov>

Subject  
Research Grants

Dear Commissioners:

On August 18 I sent you an email raising serious concerns over the awarding of a contract to the Moritz College of Law given its clearly demonstrated pre-existing opinions about provisional balloting and voter identification. Unfortunately, nothing was apparently done about this situation.

I have just learned that a similar situation has occurred. I understand that another research grant has been awarded to Tova Wang for research into "voter fraud and voter intimidation." Ms. Wang has an even more pronounced partisan and one-sided view of these issues than was present in the situation involving Moritz College. She has many posted opinions available on the Internet that make it clear that she will not be able to conduct research in an objective fashion on these issues. Just a few

028237



examples illustrate this:

"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.'"

"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."

"...voters are individually disenfranchised by continued, often race based, voter intimidation and deceptive practices..."

Carter-Baker Report: Some Bad Fixes for the Wrong Problem, 9/19/2005

"The data is also mounting that identification requirements have disproportionately disenfranchising impacts on certain communities...Given all this piling on of negative evidence, both in terms of the efficacy of ID requirements in fulfilling the goal their advocate's claim and their impact on voting rights, it is somewhat mind boggling that so many state officials, as well as other groups working on this issue, are still vigorously pushing for greater expansion of what seems to be a rather useless yet dangerous tool. Shouldn't the burden of proof now shift to the advocates of more voter ID to demonstrate the value of their cause?"

Voter ID and Fraud: Prove It, 7/28/2005

There are numerous more examples of her partisan opinions and attacks and demonstrably false claims against Republicans and election officials in general, such as her baseless charge in another article that "partisan election officials and party leaders usurped the process and manipulated the new federal voting law in ways that disenfranchised voters." Election 2004: A Report Card, 1/1/2005. The idea that she will write an objective report on issues that she has already expressed such strong opinions on ("there is no evidence that such election fraud is a serious problem") is hard to accept. I find it surprising that the EAC would award her a research grant or expect that election officials around the country would accept as valid a report written by an individual who asserts that "[a]t every step of the way, election officials in key states threw up unnecessary barriers to voting." Id. This gratuitous remark is an insult to the many hard-working election officials that we all know through our work who did everything they could during the last election to improve the election process and in large part succeeded.

Whatever procedures the EAC has set up to screen individuals and entities applying for research grants is obviously not working. I have no doubt that I could today, based on reading Ms. Wang's prior opinions, predict exactly what her report will conclude on the issues of voter fraud and voter intimidation. This situation needs to be corrected so that research is not being conducted by partisan individuals with preset opinions and views on issues. As with my prior email, I strongly recommend that the EAC reconsider the awarding of this contract.

Hans A. von Spakovsky

028238

Counsel to the Assistant Attorney General  
Civil Rights Division - Room 5539  
U.S. Department of Justice  
950 Pennsylvania Avenue  
Washington, D.C. 20530

Telephone (202) 305-9750  
Facsimile (202) 307-2839

028239

Attorney-Client  
Privilege

Margaret Sims/EAC/GOV  
11/04/2005 05:31 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Phone Message from Tova Wang

Karen:

Do we have any idea what this is about? I have had regular email contact with her during the last few days and don't know of any unresolved issues regarding my work with her. I do know that she and Job were not happy when our lawyers told them that they need to keep records of hours worked and include the total hours worked (not to exceed 20) on their monthly invoices. Job claimed that he and Tova had previously received assurances that they would not have to do what he refers to as "billing for hours worked". Could this be a fishing expedition? --- Peg

Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
11/04/2005 03:11 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Fw: Phone Message from Tova Wang

Peg-

I'm happy to call Tova if you'd like me to. Otherwise, don't want to invade your territory.

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 11/03/2005 03:09 PM -----

From: Joyce Wilson/EAC/GOV on 11/04/2005 02:26 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC  
cc:

## While You Were Out

Contact:

Tova Wang

of:

Century Foundation

Phone:

FAX:

028240

Telephoned     Please Call

Message:  
contact applicant? Has a question.

Attorney-Client  
Privilege

Margaret Sims/EAC/GOV  
11/04/2005 05:34 PM

To "Tova Wang" [REDACTED]  
cc  
bcc Karen Lynn-Dyson/EAC/GOV  
Subject RE: Invoices and Payments [REDACTED]

Tova:  
Yes, she has received your EFT fax. All is well. --- Peggy

"Tova Wang" [REDACTED]



"Tova Wang"  
[REDACTED]  
11/04/2005 02:44 PM

To psims@eac.gov  
cc  
Subject RE: Invoices and Payments

Hi Peg,

I'm sorry to bother you with this, but the EAC receptionist will not put me through to Diana and she has not responded to my email. Do you know if she got my EFT fax? Thanks. Tova

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

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Thursday, November 03, 2005 3:55 PM  
**To:** serebrov@[REDACTED] Wang [REDACTED]  
**Subject:** Invoices and Payments

Job and Tova;

The attorneys have advised me that each of you should amend your invoice to indicate the total hours worked (20) during the first month. You should submit a letter ASAP to Diana Scott with that clarification.

I have been told that it takes our agent, the General Services Administration (GSA), two to three weeks to process our requests for payment. I understand that using the electronic funds transfer (EFT) process will reduce the time for payment by up to five days, because it takes additional time for GSA to cut and mail a paper check.

Diana does not have a completed EFT form from either of you, which would permit the electronic transfer of the funds directly to your chosen bank account. I can find no evidence that Karen suggested you should submit the form, so I have attached a blank form below. Please complete it and return it with the invoice amendment to Diana. If you have any questions about how to fill out the EFT form, let me know. I'll do my best to help you out.

I understand that the contract matters are moving forward. I hope to have more news for you on Monday afternoon.

028242

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](mailto:psims@eac.gov)

028243

Juliet E. Thompson/EAC/GOV  
11/15/2005 07:18 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc

Attorney-Client  
Privilege

Subject Fw: Question

History:  This message has been replied to.

Job asked me the question below. I didn't know how to answer it as I am not sure what the follow up to this work would be other than conducting the research set forth by the RFP that he and Tova will develop. It would seem somewhat self-serving to have the same people do the work that set up the RFP. I assume that any future work will be competitively let.

Let mw know when you have a chance what a reasonable response to this question is.

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

----- Forwarded by Juliet E. Thompson/EAC/GOV on 11/15/2005 07:18 PM -----



"Job Serebrov"

~~REDACTED~~  
11/15/2005 05:02 PM

To jthompson@eac.gov  
cc

Subject Question

Julie:

With everything worked out, this may be too early to ask but I need some idea as soon as possible---everyone mentioned that there may be another six month contract to follow this one. What do you see as the chances of that?

Job

Attorney-Client  
Privilege

Tamar Nedzar/EAC/GOV  
11/21/2005 02:58 PM

To Margaret Sims/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Voter Fraud/Intimidation

Hi Peggy,

Just wondering if you had heard anything from Tova and Job about the terms they want me to search for on Lexis. If they don't get back to you today, just forward anything they send you to this email. I check it at least once a day and can do work from home.

Thanks,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov





Tamar Nedzar/EAC/GOV  
11/30/2005 10:31 AM

To Margaret Sims/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Re: Fw: Updated Word Search List

Attorney-Client  
Privilege

Hi again Peggy,

I just looked at the list, and I have to tell you that I'm a bit concerned. I know of ways to condense searching to encompass many of the terms in one session (example: vote% & fraud would bring up voter fraud, vote fraud, etc.). However, the list is still 9 pages long. I will do my best to start on it tomorrow, but it will take me more than a day to complete it given the other projects I have on my plate. I just want you to be aware that it will take me some time to complete the task given the current parameters.

Talk to you later.  
Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

-----Margaret Sims/EAC/GOV wrote: -----

To: Tamar Nedzar/EAC/GOV@EAC  
From: Margaret Sims/EAC/GOV  
Date: 11/30/2005 08:50AM  
Subject: Fw: Updated Word Search List

Tamar:

Here is an updated word search list for the case law/administrative decisions search. I am still trying to confirm the time for the teleconference. As it stands right now, I will probably call you at 3:45 PM today. I should call your home phone (703-528-1863), right?

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](mailto:psims@eac.gov)

----- Forwarded by Margaret Sims/EAC/GOV on 11/30/2005 08:47 AM -----

"Job Serebrov"

11/29/2005 07:07 PM

Towang@psims@eac.gov

cc

028246

SubjectUpdated Word Search List

Peggy & Tova:

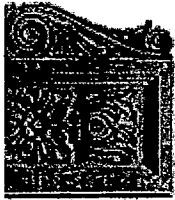
Here is the updated case law word search list.

Job



Word Search Terms.doc

**Deliberative Process  
Privilege**



Bert A. Benavides/EAC/GOV  
02/06/2007 04:37 PM

To Donetta L. Davidson/EAC/GOV, Thomas R.  
Wilkey/EAC/GOV@EAC, PDegregorio@eac.gov  
cc Matthew Masterson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Fw: Voter ID Presentation --Eagleton/Moritz (testimony,  
O'Neill and Vercellotti)

----- Forwarded by Bert A. Benavides/EAC/GOV on 02/06/2007 04:33 PM -----

"Thomas O'Neill" [REDACTED]

02/06/2007 03:42 PM

To bbenavides@eac.gov

cc

Subject Voter ID Presentation --Eagleton/Moritz

Bert,

Attached is the text of the presentation that Tim Vercellotti and I will make to the EAC on Thursday, February 8. Thanks for your help in making arrangements for this meeting. Please let me know if you need anything else from us in advance of the meeting.

See you Thursday.

Tom O'Neill



VIDPresentation020807.doc

028248

**Presentation to the  
U. S. Election Assistance Commission  
February 8, 2007**

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Summarizing a report on  
Best Practices to Improve Voter Identification Requirements  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252  
Submitted on June 28, 2006

by  
The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University

Thomas M. O'Neill  
Project Director  
And  
Tim Vercellotti  
Assistant Research Professor  
Assistant Director, Center for Public Interest Polling

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

028249

Introduction

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Our report, submitted to the EAC last June, provided information on voter identification practices in the 2004 election. It made recommendations for best practices to evaluate future proposals for voter ID requirements. In particular, we recommended a concerted, systematic effort to collect and evaluate information on voter ID requirements and turnout from the states. This report was a companion to our report on Provisional Voting, submitted to the EAC in November 2005.

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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. Unfortunately, our colleagues from Moritz could not be with us today because of teaching obligations.

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Our 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.

Voter ID requirements are just one set of election rules 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 chooses whether to vote 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 may be, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decreases.

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We conducted our research before last year's election, when the debate over voter ID requirements was sharp and polarized. We took seriously our charge from the EAC, which was not to enter the national debate, but rather to explore if an empirical study could suggest how we might estimate the effects of different voter ID requirements on turnout. That analysis, of course, would be a sensible first step to assess tradeoffs between ballot security and ballot access and provide valuable information for all parties to the debate.

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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 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 net integrity of the ballot may not have been improved.

A key part of our work was a statistical analysis to examine how turnout may vary under different voter identification requirements. We used this statistical study to develop a model to illuminate the relationships between voter ID requirements and turnout. The 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.

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Tim Vercellotti led that phase of our research and will describe his methods and conclusions.

Results of Statistical Analysis

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Our research included an examination of variation in turnout based on voter ID requirements in the 50 states and the District of Columbia. We examined this question using aggregate data at

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the county level gathered from the U.S. Census and other sources, and individual-level data from the November 2004 Current Population Survey.

Drawing from the research conducted by the Moritz College of Law, we were able to classify the states into one of five voter ID categories. Voters either had to:

1. state their name,
2. sign their name,
3. match their signatures to those already on file,
4. provide a non-photo ID,
5. provide a photo ID.

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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. The five categories for minimum requirements were:

1. stating one's name,
2. signing one's name,
3. matching one's signature to a signature on file,
4. providing a non-photo identification, or
5. swearing an affidavit.

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Analysis of the aggregate data showed that the average turnout in states requiring photo identification as a maximum requirement was 58.1 percent compared to 64.2 percent in states that required voters to give their name as the maximum requirement. The differences were slightly smaller when we examined states in terms of their minimum requirements, with 60.1 percent of voters turning out in states that required an affidavit compared to 63 percent in states that required voters to give their name as the minimum requirement.

The analyses of aggregate data also included models that controlled for other factors that might influence turnout, such as whether a county was in a presidential battleground state, the length of time between the close of the registration period and Election Day, and the demographic composition of the county in terms of race and ethnicity, age, and household income. Controlling for those factors, the maximum requirements of providing a signature match or a non-photo identification showed a negative effect on voter turnout when compared to counties in states that only required voters to give their names. None of the voter identification requirements showed an effect on turnout, however, in the model that coded counties according to the states' minimum requirements.

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Analyses of the individual-level data from the November 2004 Current Population Survey also indicated relationships between voter ID requirements and turnout. Controlling for contextual factors, such as whether a voter resided in a presidential battleground state, and demographic characteristics, such as a voter's gender, race, ethnicity, age, and education, the data showed that registered voters in states that require photo identification as a maximum requirement were 2.9 percent less likely to say they had voted compared to registered voters in states that required voters to state their names. Examining states within the context of minimum identification requirements showed that registered voters in states requiring affidavits were four

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percent less likely to say they had voted compared to registered voters in states that required individuals to give their names at the polling place.

Breaking down the Current Population Survey sample by race and ethnicity also revealed interesting patterns. Photo identification and affidavit requirements were negatively associated with whether white registered voters said they voted compared to their counterparts in states requiring registered voters to give their names. But African-American, Hispanic, and Asian-American registered voters in states that required photo identification as the maximum requirement or an affidavit as the minimum requirement were no less likely to say they had voted than their racial or ethnic counterparts in states that simply required voters to give their names.

The most consistent difference emerged in states that required non-photo identification as a maximum or a minimum requirement. In five of six statistical models, African-American, Hispanic, and Asian-American registered voters in non-photo identification states were less likely to say they had voted in November 2004 than their racial or ethnic counterparts in states that required voters to state their names as a maximum or minimum identification requirement.

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 observation does not answer the question as to why photo identification requirements did not have a more uniform effect across groups in 2004. Of course, photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement. But the finding that photo identification requirements were associated with a lower probability that white registered voters said they had voted, and the absence of a similar relationship within other racial and ethnic groups, runs counter to concerns expressed by some in the debate over voter ID. This finding points up the need for further research in this area, perhaps with a view to comparing turnout rates over time before and after a photo identification requirement takes effect, to further isolate potential relationships between photo ID requirements and turnout.

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In examining the link between voter identification requirements and 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? 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.

### Conclusions from the Research

The statistical analysis suggests that stricter voter ID requirements can be associated with lower turnout. It was not designed, however, to look at the other side of the balance equation: do tighter ID requirements reduce multiple voting or voting by ineligible voters? The scope of our research as defined by the EAC excluded assessing the dynamics and incidence of vote fraud.

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We believe, however, that sound policy on voter ID should begin with an examination of the tradeoffs between ballot security and ballot access.

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. The EAC's recent study<sup>1</sup> of election crimes found, for example, that there has never been a comprehensive, nationwide study of voting fraud and intimidation.

Without a better understanding of the incidence of vote fraud and its relationship to voter ID, for now, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility. Election law should provide the clarity and certainty needed to forestall destabilizing challenges to election outcomes. Absent a sound, empirical basis for striking a wise balance between voter ID and ballot access, legal challenges may increase, not just to the process but to electoral outcomes.

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The analysis of litigation conducted by the Moritz College of Law for our research 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.

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To strike that balance requires a more precise understanding of how voter ID requirements affect turnout. A first step in that direction would be to encourage or require states to collect and report additional data, including:

- The reasons potential voters are required to cast a provisional ballot and
- The reasons for rejecting provisional ballots.

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#### Recommendations for consideration and action by the EAC

1. Encourage or sponsor further research to clarify the connection between voter ID requirements and the number of potential voters able to cast a ballot that is counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements. The analysis will help focus the attention of the public and policy-makers on the tradeoff between ballot access and ballot security. A "Voter Impact Statement," to be drafted and offered for public review and comment before the adoption of new identity requirements, would estimate the number and demographics of:
  - Eligible, potential voters who may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and
  - Assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

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The data collection and analysis recommended in this report would help make feasible an empirically-based assessment of the effects on voter participation of proposed identification requirements. That assessment could improve the quality of the debate on this polarizing topic.

<sup>1</sup> U. S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study*, December 2006.



3. Encourage or require the states to collect and report reliable, credible information on the relationship between ballot access and ballot security. A compilation by EAC of this information would provide a 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 studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
4. Encourage or require states to sponsor surveys of voters to be conducted by local election officials. Such surveys would determine why those who cast a provisional ballot were found ineligible to cast a regular ballot and illuminate the frequency with which ID issues divert voters into the provisional ballot line. The connection between Voter ID requirements and provisional ballots is, of course, close. Voters who lack required ID will likely vote provisionally, thus placing greater demands on a system that may be hard pressed to meet those demands. Asking voters what they know about ID requirements would also provide useful context for evaluating the effect of those requirements on electoral participation.<sup>2</sup>
5. Recommend as a best practice that state election officials conduct spot checks on how the identification process actually works at polling places. These spot checks could provide information on how closely actual practice tracks statutory or regulatory requirements.
6. 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 11 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, and the safe harbor provision in presidential elections.

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#### A final thought

A voting system that requires voters to produce an ID may prevent the ineligible from voting. It may also prevent some eligible voters from casting a ballot. If the ID requirements block a few ineligible voters from the polls at the cost of preventing an equal or greater number of 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.

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Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and what form that requirement should take) will weigh value judgments as well as available factual evidence. We did our work on the premise that increased understanding of the facts relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

<sup>2</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.

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We hope that premise is realistic, and we also hope that this research has helped the Commissioners and the interested public to clarify their thinking on this polarizing topic.


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On behalf of the Eagleton – Moritz research team, we thank you for the opportunity to contribute to the national debate.

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Thomas R. Wilkey/EAC/GOV  
02/07/2007 11:15 AM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
bcc  
Subject Re: My Niece 

Thanks my friend...she was my favorite and I was so proud of her...she struggled to get through Nursing School and had so many difficulties in her life.  
I appreciate your support and your friendship...life hasn't been good to me lately so your. Friendship means even more.  
Give Eagleton a hard time for me tomorrow  
Thanks again  
Tom

-----  
Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio  
----- Original Message -----

**From:** Paul DeGregorio  
**Sent:** 02/07/2007 11:16 AM  
**To:** Thomas Wilkey  
**Subject:** Re: My Niece

Tom,

I am so sorry to hear of the passing of your niece and my sincere sympathies go out to you and your family. I hope you take off whatever time you may need.

Paul DeGregorio  
Commissioner  
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

028256



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 27, 2000

The Honorable John Linder  
Chairman, Subcommittee on Rules and  
Organization of the House  
Committee on Rules  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

We have carefully reviewed the testimony presented to the Subcommittee on Rules and Organization of the House at its hearing on July 15, 1999, on "Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch." The Department of Justice appreciates the Subcommittee's interest in this area, and we would like to take this opportunity to present in this letter, for the benefit of both Members of Congress and the public at large, the approach we take to the issues raised at the hearing. As always, we are committed to cooperating with your Subcommittee, and all committees of Congress, with respect to the oversight process.

The testimony presented at the hearing suggests to us that there is a need for improved communication and sensitivity between the Executive and Legislative Branches regarding our respective institutional needs and interests. It also suggests that there is considerable misunderstanding about the principles that govern the Department's longstanding positions and practices on responding to congressional oversight requests. We hope that this discussion of those governing principles will be helpful to the Committee and foster an improved understanding of the Department's interests in responding to oversight requests.

#### General Approach

The oversight process is, of course, an important underpinning of the legislative process. Congressional committees need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. By helping Congress be better informed when it makes legislative decisions, oversight promotes the accountability of government. The information that committees gather in this oversight capacity is also important for the Executive Branch in the future implementation of the law and its participation in the legislative process. We have found that the oversight process can shed

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valuable light on Department operations and assist our leadership in addressing problems that might not otherwise have been clear.

President Reagan's November 4, 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" sets forth the longstanding Executive Branch policy on cooperating with Congressional oversight:

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch . . . [E]xecutive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches.

The D.C. Circuit Court of Appeals has recognized the obligations of Congress and the Executive Branch to seek to accommodate the legitimate needs of the other:

The framers . . . expect[ed] that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.

United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977). Attorney General William French Smith captured the essence of the accommodation process in a 1981 opinion: "The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch." Opinion of the Attorney General for the President, Assertion of Executive Privilege in Response to a Congressional Subpoena, 5 Op. O.L.C. 27, 31 (1981).

In implementing the longstanding policy of the Executive Branch to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch, the Department's goal in all cases is to satisfy legitimate legislative interests while protecting Executive Branch confidentiality interests. Examples of confidential information include national security information, materials that are

protected by law (such as grand jury information pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure and taxpayer information pursuant to 26 U.S.C. § 6103); information the disclosure of which might compromise open criminal investigations or prosecutions or civil cases or constitute an unwarranted invasion of personal privacy; and predecisional deliberative communications (such as internal advice and preliminary positions and recommendations).

We believe that it must be the Department's efforts to safeguard these important Executive Branch institutional interests that have led to the frustrations expressed during the Subcommittee's hearing. We hope that we can reduce those frustrations in the future by setting forth here our perspective on some of the more important institutional interests that are implicated during the course of Congressional oversight.

### Open Matters

Much of the testimony at the hearing addressed oversight of ongoing Department investigations and litigation. Although Congress has a clearly legitimate interest in determining how the Department enforces statutes, Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek records and other information that our responsibilities for these matters preclude us from disclosing. Consequently, we have sought whenever possible to provide information about closed, rather than open, matters. This enables Congress to analyze and evaluate how statutory programs are handled and the Department conducts its business, while avoiding the potential interference that inquiries into open matters entail.

The open matters concern is especially significant with respect to ongoing law enforcement investigations. The Department's longstanding policy is to decline to provide Congressional committees with access to open law enforcement files. Almost 60 years ago, Attorney General Robert H. Jackson informed Congress that:

It is the position of the Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that congressional or public access to them would not be in the public interest . . . .

40 Op. Att'y. Gen. 45, 46 (1941). Attorney General Jackson's position was not new. His letter cited prior Attorney General letters taking the same position dating back to the beginning of the 20th century (*id.* at 47-48).

The rationale for this policy is set forth in a published opinion of the Office of Legal Counsel issued by Charles J. Cooper, Assistant Attorney General for the Office of Legal Counsel

during part of the Reagan Administration. See Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act, 10 Op. O.L.C. 68, 76-77 (1986). Mr. Cooper noted that providing a Congressional committee with confidential information about active criminal investigations would place the Congress in a position to exert pressure or attempt to influence the prosecution of criminal cases. Id. at 76. Congress would become, "in a sense, a partner in the investigation," id., and could thereby attempt to second-guess tactical and strategic decisions, question witness interview schedules, debate conflicting internal recommendations, and generally attempt to influence the outcome of the criminal investigation. Such a practice would significantly damage law enforcement efforts and shake public and judicial confidence in the criminal justice system. Id. at 76-77.

Decisions about the course of an investigation must be made without reference to political considerations. As one Justice Department official noted 30 years ago, "the Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation." Memorandum for Edward L. Morgan, Deputy Counsel to the President, from Thomas E. Kauper, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Submission of Open CID Investigation Files 2 (Dec. 19, 1969).

In addition to the problem of Congressional pressure and the appearance of such pressure, the disclosure of documents from our open files could also provide a "road map" of the Department's ongoing investigations. The documents, or information that they contain, could come into the possession of the targets of the investigation through inadvertence or a deliberate act on the part of someone having access to them. The investigation would be seriously prejudiced by the revelation of the direction of the investigation, information about the evidence that the prosecutors have obtained, and assessments of the strengths and weaknesses of various aspects of the investigation. As Attorney General Jackson observed:

Disclosure of the [law enforcement] reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or a prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Atty. Gen. at 46. The Department has similar interests in the confidentiality of internal documents relating to its representation of the United States in civil litigation. Our litigation files usually contain confidential correspondence with client agencies as well as the work product of our attorneys in suits that frequently seek millions of tax dollars. They also contain "road maps" of our litigation plans and preparations, as well as confidential reports from experts and consultants. Those plans could be seriously jeopardized and our positions in litigation compromised if we are obliged to disclose our internal deliberations including, but not limited to,

our assessments of the strengths and weaknesses of evidence or the law, before they are presented in court. That may result in an unfair advantage to those who seek public funds and deprive the taxpayers of confidential representation enjoyed by other litigants.

In addition, the reputations of individuals mentioned in internal law enforcement and litigation documents could be severely damaged by the public release of information about them, even though the case might ultimately not warrant prosecution or other legal action. The Department takes very seriously its responsibility to respect the privacy interests of individuals about whom information is developed during the law enforcement process or litigation.

### Internal Department Deliberations

With respect to oversight on closed matters, the Department has a broad confidentiality interest in materials that reflect its internal deliberative process. In particular, we have sought to ensure that all law enforcement and litigation decisions are products of open, frank and independent assessments of the pertinent law and facts -- uninhibited by political and improper influences that may be present outside the Department. We have long been concerned about the chilling effect that would ripple throughout government if prosecutors, policy advisors at all levels and line attorneys believed that their honest opinion -- be it "good" or "bad"-- may be the topic of debate in Congressional hearings or floor debates. These include assessments of evidence and law, candid advice on strengths and weaknesses of legal arguments, and recommendations to take or not to take legal action against individuals and corporate entities.

The Department must seek to protect this give-and-take process so that the participants in the process can vigorously debate issues before them and remain able to provide decisionmakers with complete and honest counsel regarding the conduct of the Department's business. If each participant's contribution can be dissected by Congress in a public forum, then the free and candid flow of ideas and recommendations would certainly be jeopardized. The Supreme Court has recognized the legitimacy of this "chilling effect" concern: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." United States v. Nixon, 418 U.S. 683, 705 (1974). Our experience indicates that the Department can develop accommodations with Congressional committees that satisfy their needs for information that may be contained in deliberative material while at the same time protecting the Department's interest in avoiding a chill on the candor of future deliberations.

The foregoing concerns apply with special force to Congressional requests for prosecution and declination memoranda and similar documents. These are extremely sensitive law enforcement materials. The Department's attorneys are asked to render unbiased, professional judgments about the merits of potential criminal and civil law enforcement cases. If their deliberative documents were made subject to Congressional challenge and scrutiny, we would face a grave danger that they would be chilled from providing the candid and independent analysis essential to just and effective law enforcement or, just as troubling, that



they might err on the side of prosecution simply to avoid public second-guessing. This in turn would undermine public and judicial confidence in our law enforcement processes, untoward consequences we are confident that Congress, like the Department, wishes to avoid.

### Privacy

In addition to these concerns, disclosure of declination memoranda would implicate significant individual privacy interests as well. Such documents discuss the possibility of bringing charges against individuals who are investigated but not prosecuted, and often contain unflattering personal information as well as assessments of witness credibility and legal positions. The disclosure of the contents of these documents could be devastating to the individuals they discuss. We try to accommodate Congressional needs for information about declinations whenever possible by making appropriate Department officials available to brief Committee Members and staff. This affords us an opportunity to answer their questions, which can be helpful because it can include the context and process that accompanied the decision. Hence, the discussion with staff may provide useful information and minimize the intrusion on individual privacy and the chill on our attorneys' preparation of future deliberative documents.

### Line Attorneys

The Department also has a strong institutional interest in ensuring that appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional questions about Department actions. This is based in part upon our view that supervisory personnel, not line employees, make the decisions that are the subjects of congressional review, and therefore they should be the ones to explain the decisions. More fundamentally, however, we need to ensure that our attorneys and agents can exercise the independent judgment essential to the integrity of law enforcement and litigation functions and to public confidence in those decisions. Senator Orrin Hatch has recognized the legitimacy of the Department's practice in this area, observing that Congressional examination of line attorneys "could chill career Department of Justice lawyers in the exercise of their daily duties." See Letter to Attorney General Janet Reno from Senator Orrin Hatch, dated September 21, 1993. Representative Henry Hyde has likewise opposed Congressional interviews of line prosecutors. See Letter of Representative Hyde to Representative Carlos Moorhead, dated September 7, 1993. By questioning supervisors and ultimately the Department's Senate-confirmed leadership, Congress can fulfill its oversight responsibilities without undermining the independence of line attorneys and agents.

\* \* \*

In sum, the Department recognizes that the process of Congressional oversight is an important part of our system of government. We are committed to cooperating with oversight requests to the fullest extent consistent with our constitutional and statutory responsibilities.

We welcome your suggestions about how we should work together to accommodate the needs of our respective branches of government. Please do not hesitate to contact me if you would like to discuss these matters further. I intend at all times to work diligently with you toward satisfying the respective needs of our coordinate branches.

Sincerely,



Robert Raben

Assistant Attorney General

cc: The Honorable Tony Hall  
Ranking Minority Member

Attorney-Client  
Privilege

Tamar Nedzar/EAC/GOV  
12/05/2005 10:24 AM

To "Tova Wang" [REDACTED]  
cc Margaret Sims/EAC/GOV@EAC  
bcc Karen Lynn-Dyson/EAC/GOV  
Subject RE: Search Results Example [REDACTED]

Tova and Job,

Thank you for your feedback. There are two factors that went into my decision to perform the search in the manner I indicated which may have a bearing on whether you want me to do each search individually.

First, I checked with the Lexis representative at my school, who suggested the search methodology I used. She indicated that I would get the same results if I did the searches separately or together.

Second, as I am in the midst of finals, as you can imagine, I have limited time to devote to work. I will only be in the office two days in the next two weeks and will not be able to do much work from home. As a result, I probably won't be able to do the majority of the searches until just after Christmas if I am to do the each term separately. If not, I should be able to get you results by the week before Christmas.

I will do whatever you and Peggy decide given your timelines, but wanted to let you know the factors that went into my decision.

Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov

"Tova Wang" [REDACTED]



"Tova Wang"  
[REDACTED]  
12/02/2005 05:22 PM

To tnedzar@eac.gov  
cc "Job Serebrov" [REDACTED]  
Subject RE: Search Results Example

And thank you for your work on this. Let us know if you have any questions.

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

From: Job Serebrov [mailto:[REDACTED]]  
Sent: Friday, December 02, 2005 5:19 PM  
To: tnedzar@eac.gov  
Cc: wang [REDACTED]  
Subject: Re: Search Results Example

Tamar:

028264

You are not going to be able to place all of these word searches together. We need you to take each term on the list and do a search on it. You can only merge terms when it will not add other terms and therefore affect the outcome. For instance, vote and voter could probable be merged. I know this creates much much more work but it can't be helped. I would like you to pull the first 50 cases for each set of terms and send them to us with a short case summary (I know Westlaw lets you do a short case summary). From there we will have to read the cases and decide if we need any others in that search term.

Regards,

Job

--- tnedzar@eac.gov wrote:

-----  
Tova and Job,

It was good to talk to you today. Hope you are doing well. I've attached my African American search results below. It encompasses all of the terms you suggested having to do with African Americans.

The following is a search I used to truncate words and combine terms, but I still got a large number of results:

Vot! and deny and black or vot! and black and challenge or vot! and black and reject or vot! and black or vot! And deny and African w/s American or vot! And African w/s American and reject or challenge or vot! And African w/s American or election and black and deny or challenge or reject or election and black or election and African w/s American and deny or challenge or reject or election and African w/s American or ballot and security and black or ballot and security and African w/s American or black and vot! And suppress! Or African w/s American and vot! And suppress or African w/s and disenfranchis! or black and disenfranchis!

If this search yields useful cases for you, I can continue searching using the same strategy. If not, please provide me with additional guidelines and I will do my best!

Please feel free to contact me should you have any questions or need additional information.  
Thank you,

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005

028265

(202) 566-2377  
<http://www.eac.gov>  
TNedzar@eac.gov

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

08/17/2006 12:54 PM

To jlayson@eac.gov

cc

bcc

Subject Talking points question from Cameron

She wanted to know if we have put together any talking points on Voter ID

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

028267

Jeannie Layson /EAC/GOV  
09/19/2006 11:17 AM

To pdegregorio@eac.gov  
cc asherrill@eac.gov  
bcc  
Subject Interview Requests for Tomorrow

Mr. Chairman,  
Two more interview requests for tomorrow:

1. NPR's News and Notes would like to have you as a guest on their program tomorrow morning at 8 a.m. EST for five to eight minutes. Topic: Your thoughts on the states that are cracking down on voter fraud through voter ID laws, registration policies, etc. Also, they want your take on the Fed. Election Integrity Act, the bill sponsored by Hyde regarding voter ID which will be dropped this week. The interview would be taped, and it would run at 9 a.m. EST. News and Notes explores issues that impact the African American community. You will be interviewed by Farai Chideya (Fah-rah Chu-day-ah). Go here <http://www.npr.org/templates/story/story.php?storyId=11> to read more about the program and the host. You are to call 310-815-4302 from a land line. Backup: Producer Devin Robbins at 310-815-4379.

2. Mary Ann McGee of Information Week is working on a story about voting system security. I talked to her about our efforts to help election officials focus on the entire process, not just the voting machine. I sent her the Quick Start guide. She's interested in hearing more about this from you. This is a good opportunity to get the message out that the real challenges we face in Nov. are having enough people and making sure they are properly trained. She wants to talk to you at 10:30 am EST. You are to call her at 508-697-0083.

Please let me know if you will be able to accomodate these reporters, and I'll take it from there. 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)

028268

Bryan Whitener /EAC/GOV  
09/20/2006 04:57 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject update - Huma Zaidi, NBC News

History: This message has been replied to.

Huma asked if testimony will include updates on the progress/status of current voter info websites and overseas voting programs and if we will discuss voter ID requirements.

I said it may be that voter ID requirements are discussed simply in terms of the overall content of the voter information websites. I distinguished between the morning panels on voter information websites and the afternoon panel on military and overseas voting. She asked what EAC can or will do regarding military and overseas voting before the election. I said EAC will hear testimony about the status, best practices and issues associated with UOCAVA voters and share the information with the public and election officials so they are better informed to help meet the challenge. In particular, I said Scott Wiedmann would provide information on new approaches by FVAP. I said that EAC has been working with state and local officials and experts to fine-tune the UOCAVA survey instrument and that Thursday's meeting comes two years to the day after EAC released the Best Practices UOCAVA report.

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
09/20/2006 03:35 PM

To Bryan Whitener/EAC/GOV@EAC  
cc  
Subject Re: Request from Huma Zaid, NBC News

Send her the news release, embargoed. Read thru testimony and give her more details about what participants will say.

-----  
Sent from my BlackBerry Wireless Handheld  
Bryan Whitener  
----- Original Message -----

**From:** Bryan Whitener  
**Sent:** 09/20/2006 03:03 PM  
**To:** Jeannie Layson  
**Subject:** Request from Huma Zaid, NBC News

Huma Zaid, NBC News researcher asked "is there any information you can send me in advance pertaining to the discussions that are on the agenda? I'd like to include a brief preview of the event for MSNBC.com tomorrow morning." I pointed out the link to the agenda. If they approve the news release, I could send an embargo copy, right? Is it too much to send her any testimony or do we have to wait?

028269



Karen Lynn-Dyson/EAC/GOV

09/25/2006 12:20 PM

To twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC

cc Sheila A. Banks/EAC/GOV@EAC

bcc Jeannie Layson/EAC/GOV

Subject Distribution of Voter ID Report Appendices to Tom Hicks

Commissioner Hillman has asked a follow-up question regarding the sharing of EAC's information, on the Eagleton study on Voter ID requirements, with Tom Hicks.

I have given Sheila the following appendices for possible distribution to Tom Hicks:

1. Summary of Voter ID Requirements by State
2. Court Decisions and Literature on Voter Identification and Related Issues Court decisions
3. Annotated bibliography on Voter Identification Issues

I have **not** given Sheila, for distribution, these Appendices or parts of the report:

1. Analysis of Effects of Voter ID Requirements on Turnout
2. The Executive Summary and Recommendations
3. Summary of Research
4. State Statutes and Regulations Affecting Voter Identification (electronic version only)

**\*\*You'll also recall that I 'm awaiting Tom 's approval to send to Mike McDonald , various appendices from the Eagleton Provisional Voting report**

Thanks

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

028270

Jeannie Layson /EAC/GOV  
09/27/2006 10:02 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>  
bcc

Subject Re: Dan Tokaji's Blog 

Yes, this is a big deal right now. Both sides looking for research to support their assertions.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson  
----- Original Message -----

**From:** Karen Lynn-Dyson  
**Sent:** 09/27/2006 10:03 AM  
**To:** Juliet Hodgkins; Thomas Wilkey  
**Cc:** Jeannie Layson  
**Subject:** Fw: Dan Tokaji's Blog

FYI-

Since this voter ID analysis ( linking voter ID to depressed turnout) is now public and attributed to a contract the EAC let, I think this significantly influences what we may want to write and say in a final report.

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 09/27/2006 09:55 AM -----


**Bryan Whitener /EAC/GOV**  
09/27/2006 09:55 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
Subject Dan Tokaji's Blog

**Dan Tokaji's Blog**  
<http://moritzlaw.osu.edu/blogs/tokaji/index.html>

028271

**Karen Lynn-Dyson/EAC/GOV**  
10/03/2006 10:16 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: 

Last week Tom Hicks was given all of the report appendices except the statistical analysis, and the Eagleton summary report. Takaji's blog contains everything except the Eagleton summary report.

So, as near as I can determine everything except the Eagleton report on "Best Practices to Improve Voter Identification Requirements" and, of course, our report on voter ID, is out there.


I can tell Alvarez that while EAC has yet to release a statement or its findings on Voter ID, the material contained in Tokaji's blog should be used.

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

Jeannie Layson/EAC/GOV

**Jeannie Layson /EAC/GOV**  
10/03/2006 10:05 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
Subject Re: 

How can I answer that? What is the status of the project?

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson  
----- Original Message -----

**From:** Karen Lynn-Dyson  
**Sent:** 10/03/2006 10:05 AM  
**To:** "Mike Alvarez" <rma@hss.caltech.edu>@GSAEXTERNAL  
**Cc:** Jeannie Layson  
**Subject:** Re:

Hi Mike-

Indeed, Eagleton has been sharing portions of the findings in various settings, and you may have noted it referenced on Dan Tokaji's blog.

I've asked our Communications Director, Jeannie Layson, to get you with a definitive answer to your

028272

question.

Hope the conference is productive.

Regards-

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

"Mike Alvarez" [redacted]



"Mike Alvarez"  
[redacted]

10/02/2006 10:44 PM

To klynndyson@eac.gov

cc

Subject

Hi -- hope all is well.

I've got a quick question for you. Vercellotti and Anderson have put out for public distribution what looks to be their work from their EAC report on voter identification (<http://www.law.eas.edu/brog> [redacted]).

Given that this piece of their research project is available, is the rest of their work available for public distribution yet (as you know the VTP is having a conference at the end of this week on voter identification and registration, it would be nice to have access to the EAC research at the conference, even at this late date).

--

\*\*\*\*\*

R. Michael Alvarez (O)


[redacted] Professor of Political Science (F)

[redacted] Caltech/MIT Voting Technology Project  
California Institute of Technology  
Pasadena, CA 91125  
[redacted]

Contributor to Election Updates,  
<http://www.law.eas.edu/brog> [redacted]

\*\*\*\*\*

Thomas R. Wilkey/EAC/GOV  
01/22/2007 05:40 PM

To Bryan Whitener/EAC/GOV@EAC  
cc Gavin S. Gilmour/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen  
bcc  
Subject Re: Response Requested - EAC voter ID report 

I think that is exactly what I am saying and what the Commissioners have decided how it would be released.

-----  
Sent from my BlackBerry Wireless Handheld  
Bryan Whitener  
----- Original Message -----


**From:** Bryan Whitener  
**Sent:** 01/22/2007 05:44 PM  
**To:** Thomas Wilkey  
**Cc:** Gavin Gilmour; Jeannie Layson; Juliet Hodgkins; Karen Lynn-Dyson  
**Subject:** Re: Response Requested - EAC voter ID report

Tom,

Regarding the FR notice, it can be short but it must be accurate and complete. We will also include this info in the newsletter on Thursday. Many people feel strongly about this issue and it may well generate news stories regardless of what we do. We must get it right at the beginning and be prepared to answer questions from the public and the media such as: How long have we had it ? Why are we discussing it now ? How much did it cost ? What will EAC do with it or what exactly are the next steps? If this is a report with preliminary research findings together with recommendations for future study, then could EAC acknowledge the findings without accepting them but instead accept recommendations for future study?

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
01/22/2007 05:15 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Re: Response Requested - EAC voter ID report 

Eagleton is submitting it's report as written. There will be a SHORT Executive Summary prepared by staff which will incorporate. Recommendations for. Future study which the Commissioners will be asked to adopt.

The report itself will be presented but not formally adopted but merely released and recommendations adopted.

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour

028275

**Sent:** 01/22/2007 05:16 PM  
**To:** Bryan Whitener  
**Cc:** Jeannie Layson; Juliet Hodgkins; Karen Lynn-Dyson; Thomas Wilkey  
**Subject:** Re: Response Requested - EAC voter ID report

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

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.

Bryan Whitener/EAC/GOV

**Bryan Whitener /EAC/GOV**  
01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC  
Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,  
Bryan

[attachment "Public Meeting, 2-08-07, Wash., Draft Agenda.doc" deleted by Thomas R. Wilkey/EAC/GOV]

028276



"Bryan Whitener"  
<bwhitener@eac.gov>  
02/07/2007 01:25 PM

To jlayson@eac.gov  
cc  
bcc  
Subject Media Advisory - EAC to Decide on Voting System Test Lab  
Program & Get Voter ID Research Update



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

---

## **MEDIA ADVISORY - *Reminder***

February 7, 2007

Contact: Bryan Whitener  
(202) 566-3100

### **EAC to Decide on Voting System Test Lab Program & Get Voter ID Research Update**

**WHAT: Public Meeting** - Commissioners will receive an update on the full Voting System Laboratory Accreditation Program and consider whether to terminate the interim program. Commissioners will also be briefed on the voter ID research along with an update on EAC's audit process.

**WHO: EAC commissioners, election officials, technical experts and researchers.**

**WHERE: EAC Offices, 1225 New York Ave., Suite 150, Washington, DC**

**WHEN: Thursday, February 8, 10:00 a.m. - 1:00 p.m. (EST)**

**To view the agenda, click here.**

###

*To learn more about the EAC, please visit [www.eac.gov](http://www.eac.gov) .*

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028277

To no longer receive email from us [click here](#).



Karen Lynn-Dyson/EAC/GOV

To twilkey@eac.gov

02/13/2007 11:00 AM

cc Donetta L. Davidson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC

bcc

Subject Next Steps on the voter ID report

Tom-

Just wanted to check in to determine what, if anything, I need to do in order to assist with the creation and delivery of EAC's report on the Voter ID study.

I assume that we will have to issue something **on or about March 8.**

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

028279

**Bryan Whitener /EAC/GOV**  
02/15/2007 03:11 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: voter ID

Just to note, at the Feb 8 meeting, the chair directed exec dir. to provide staff recommendations to commishes within thirty days, but of course we aren't having a March 8 meeting.

----- Forwarded by Bryan Whitener/EAC/GOV on 02/15/2007 03:06 PM -----



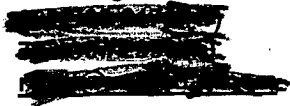
**"Wolf, Richard"**  
~~XXXXXXXXXXXXXXXXXXXX~~  
02/15/2007 02:33 PM

To bwhitener@eac.gov  
cc  
Subject voter ID

Hi Bryan --

Just want to talk to Davidson or another commish on the Eagleton research on voter ID -- their impressions, what they want to see happen on that issue, etc.

**Richard Wolf**  
Washington correspondent  
USA TODAY  
1100 New York Avenue NW  
Washington, D.C. 20005



Bryan Whitener /EAC/GOV  
02/16/2007 05:24 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc

Subject FYI - Today's media inquiries ( 2-16-07, Frid )

Commissioners:

Today we had the following media inquiries:

(1) The chair was interviewed by Rich Wolfe of USA Today about the voter ID research. She said we discussed the initial findings about voter ID at a public meeting b/c this is such an important issue that impacts voters in every corner of this country. She noted that the new voter ID laws have been enacted in many states in just a few short years, and that the initial work done by Eagleton only covered one election cycle, and she believed we must study this issue over at least two like elections (presidential) to determine if these new laws have had any impact. The chair said based on the initial work conducted by Eagleton, I've instructed staff to present to the commission w/n 30 days a plan for moving forward to continue studying the impact of voter ID. We will immediately release this plan to the public. He then asked about some of the election reform bills in Congress, specifically the points brought up during Sen. Feinstein's hearing. The chair pointed out that we need to make sure timelines are realistic -- election officials need to have time to make sure new laws will work. Implementation doesn't happen overnight. She said we need to make sure we can actually accomplish initiatives within the timeframes prescribed. She said states are always aware that they must first meet certification requirements, conduct mock elections and train staff before introducing new equipment.

(2) Dick Smolka of Election Administration Reports asked if EAC's meeting with voting equipment vendors on Tuesday was in response the Board of Advisors Resolution that EAC collect certain information from them. Brian Hancock replied that this was not the topic of the meeting and that he had not yet been instructed to collect the information requested in the resolution.

(3) Cara Matthews of Gannett News in Albany called to ask the latest about the possible loss of HAVA 102 funds by New York. We said that we are continuing to review the responses from all the states in the order they were received.

####

028281

Jeannie Layson /EAC/GOV  
02/20/2007 01:53 PM

To d davidson@eac.gov  
cc  
bcc  
Subject Interview request

Chris Drew of the NYT wants to talk to you about next steps regarding the voter ID research. He was at the meeting, but missed this segment b/c he had me cornered in the kitchen to discuss the Ciber issue. (This is the reporter who wrote the original story.) Please call him at 212-556-1356. He's writing the article b/c his editor saw the one in USA Today and thinks they should cover it, too. Please reply and let me know you got this. Talking points you used for Rich are below.

1. We discussed the initial findings about voter ID at a public meeting b/c this is such an important issue that impacts voters in every corner of this country.
2. New voter ID laws have been enacted in many states in just a few short years.
3. The initial work done by Eagleton only covered one election cycle, and I believe we must study this issue over at least two like elections (presidential) to determine if these new laws have had any impact.
4. Based on the initial work conducted by Eagleton, I've instructed staff to present to the commission w/n 30 days a plan for moving forward to continue studying the impact of voter ID. We will immediately release this plan to the public.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

028282

Jeannie Layson /EAC/GOV  
02/21/2007 12:57 PM

To: jgalloway [REDACTED]  
cc  
bcc Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Voter ID

Mr. Galloway,

Per your inquiry, we have been working with the Eagleton Institute to study issues related to voter ID. We held a public meeting earlier this month in which we discussed this project to provide an update on progress being made. At the meeting, EAC commissioners asked the researchers questions about what they'd found so far, methodology, etc. At the conclusion of the questions, EAC Chair Donetta Davidson instructed EAC staff to take a look at Eagleton's recommendations for moving forward and w/n 30 days present the commissioners with suggestions for further research about voter ID laws. She noted that she thought it was important to study more than one election cycle, since some of these ID laws are so new. Go [here](#) to view the testimony Eagleton presented at the meeting, and go [here](#) to read the Eagleton paper, in which they referenced some of the data they had collected on our behalf.

For your information, EAC is an independent bipartisan commission created by HAVA. It is charged with developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting test laboratories, certifying voting systems and serving as a national clearinghouse and resource of information regarding election administration. The Commission is also responsible for auditing the use of HAVA funds.

Let me know if I can be of further assistance. 202-566-3103.

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)

028285

Bryan Whitener /EAC/GOV  
02/21/2007 05:47 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.  
bcc  
Subject FYI - Today's media inquiries ( 2-21-07, Wed )

Commissioners:

Today we had the following media inquiries:

(1) Commissioner Hillman was interviewed by Charles Edwards of NPR in Atlanta about the Standards Bd. meeting. She explained the role of the board, talked about the agenda, including the visit to Kennesaw, and told him GA SOS Handel is on the board. She provided an overview of our voting system standards setting process and our programs to accredit labs and to test and certify systems. She also talked about the importance of gaining public confidence in the voting equipment they use, and talked about our responsibility to bring more accountability to the process.

(2) Jim Galloway of the Atlanta Journal Constitution wanted the report on voter ID. We explained that we had been working with the Eagleton Institute to study issues related to voter ID. We held a public meeting earlier this month in which we discussed this project to provide an update on progress being made. At the meeting, EAC commissioners asked the researchers questions about what they'd found so far, methodology, etc. At the conclusion of the questions, EAC Chair Donetta Davidson instructed EAC staff to take a look at Eagleton's recommendations for moving forward and w/n 30 days present the commissioners with suggestions for further research about voter ID laws. She noted that she thought it was important to study more than one election cycle, since some of these ID laws are so new. We sent him the Eagleton testimony. He requested info about the paper presented by Eagleton that referenced the statistics they collected for us, and we sent it to him.

(3) Josh Stager of Congressional Quarterly asked for the Eagleton report on voter ID. We referred him to the testimony on our website and explained that the presentation by Eagleton consisted of a briefing to EAC on their research. We said that the commissioners did not vote on or decide anything with regard to the research. We said that the chair asked the executive director to develop staff recommendations regarding the research to present to the commissioners within thirty days.

(4) Ken Vogel of Politico called Curtis and asked if the OIG had researched the qualifications of the two new commissioners. Curtis said no, that was part of the nomination process. The reporter asked if the OIG was looking into the Ciber issue, and Curtis said he could not comment on that.

###

028284

Karen Lynn-Dyson/EAC/GOV  
03/09/2007 10:49 AM

To "Rosemary Rodriguez"  
[REDACTED]  
cc chunter@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
jhodgkins@eac.gov, jlayson@eac.gov  
bcc  
Subject Re: Final EAC statement on Voter ID report [REDACTED]

Commissioners-

As requested, Jeannie Layson will take the attached statement and prepare a final version for Commissioner's review and tally vote on Monday.

Regards-

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

"Rosemary Rodriguez"  
[REDACTED]

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov  
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov  
Subj Re: Final EAC statement on Voter ID report  
ect

are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>  
To: klynndyson@eac.gov  
Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;  
chunter@eac.gov; [REDACTED]  
Sent: Thursday, March 8, 2007 4:35:27 PM  
Subject: Re: Final EAC statement on Voter ID report

028285

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005

028286




tel:202-566-3123

---

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

028287

Jeannie Layson /EAC/GOV  
03/13/2007 09:25 AM


To Gracia Hillman/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Re: Next draft of the Voter ID statement 

I am waiting until I get everyone's changes before I review for grammar. I still have not received Comm. Hunter's changes.

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)  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
03/13/2007 08:11 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc jlayson@eac.gov  
Subject Re: Next draft of the Voter ID statement 

I am comfortable with the latest redraft. However, if there are any changes of substance, even a one word change can be substantive in this document, I will want to see a redraft before it is sent for tally vote.

The statement is well written but there remain some editing issues. Lack of commas, use of the words "which" versus "that." Typo - the word "this" when I think it is supposed to be "his." (I do not consider grammatical and spelling edits as substantive.)

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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028288

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Bryan Whitener /EAC/GOV  
03/13/2007 06:35 PM

To Donetta L. Davidson/EAC/GOV@EAC,  
[REDACTED] Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola  
Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC,  
Curtis Crider/EAC/GOV@EAC, DeAnna M.

bcc

Subject FYI - Today's media inquiries ( 3-13-07, Tues )

Commissioners:

Today we had the following media inquiries:

(1) Marie Cocco of the Washington Post Writers Group (syndicated columnists) called asking about our voter fraud report and the voter ID report. She wanted to know about reports that we had refused to release the voter fraud data. (This is prompted by accusations that refusals to aggressively pursue voter fraud was an issue in the recent firing of some federal prosecutors.) Regarding the voter ID project, we directed her to the testimony from the public meeting, and said that 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, we said that 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, and we sent her the document and told her it was given to anyone who asked for it. we explained that the commissioners had adopted a final report, including four recommendations for further study, and sent it to her. we said that 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.

(2) Chris Drew of the New York Times wanted to know the status of our voter fraud research, and we directed him to the report on the website.

(3) Steve Terrell of the Sante Fe New Mexican wanted to know what was going on with the NM audit. we checked with Curtis, then told him that our OIG was conducting an audit regarding the expenditure of HAVA funds, and that the audit was requested by the NM SOS.

###

028296

Caroline C. Hunter/EAC/GOV  
03/16/2007 11:43 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, [REDACTED]  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, [REDACTED]

bcc

Subject Re: Voter ID statement

This looks good to me, thank you Julie. Two things- did Eagleton approve the 2nd graph and I made a minor change to the 4th bullet as a point of clarification.

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 03/16/2007 09:41 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; [REDACTED]  
**Cc:** Thomas Wilkey; Jeannie Layson  
**Subject:** Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Caroline C. Hunter/EAC/GOV]  
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Caroline C. Hunter/EAC/GOV]

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

028291



Gracia Hillman/EAC/GOV  
03/22/2007 03:29 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Re: Project allotments

How about if we ask Eagleton for an estimate of the percent of costs they would attribute to the Voter ID portion of the study?

That way we can say the Voter ID study cost approximately X dollars.  
(And deductively, the Prov Vote study cost X dollars.)

-----  
Sent from my BlackBerry Wireless Handheld  
Jeannie Layson  
----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 03/22/2007 02:23 PM EDT  
**To:** Gracia Hillman  
**Cc:** Karen Lynn-Dyson  
**Subject:** Re: Project allotments

\$560,002

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  
03/22/2007 01:17 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Re: Project allotments

What is the (total) dollar amount of the contract?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 03/22/2007 10:59 AM EDT  
**To:** Gracia Hillman  
**Cc:** Karen Lynn-Dyson  
**Subject:** Project allotments

Commissioner,

Per your question about how much of the contract was actually spent on voter ID research vs provisional voting... I have yet to find the answer. I have reviewed the RFP and the invoices, but so far, it does not appear that these tasks were tracked separately. Karen and I continue to look into this, but I wanted to let you know what we've found so far.

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028293



"Rosemary Rodriguez "

03/27/2007 02:20 PM

To jlayson@eac.gov, d davidson@eac.gov, chunter@eac.gov,  
ghillman@eac.gov, rrodriguez@eac.gov  
cc twilkey@eac.gov, klyndyson@eac.gov,  
jthompson@eac.gov, bwhitener@eac.gov, ekuala@eac.gov,  
[REDACTED], sbanks@eac.gov,  
bcc

Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

I think we should be prepared to answer a question that may go something like: *What are your specific objections/concerns with the methodologies utilized by Eagleton?*

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

From: "jlayson@eac.gov" <jlayson@eac.gov>  
To: d davidson@eac.gov; [REDACTED], chunter@eac.gov; ghillman@eac.gov  
Cc: twilkey@eac.gov; klyndyson@eac.gov; jthompson@eac.gov; bwhitener@eac.gov;  
ekuala@eac.gov; [REDACTED]; sbanks@eac.gov; bbenavides@eac.gov  
Sent: Tuesday, March 27, 2007 2:02:01 PM  
Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,

I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the \$500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

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---

8:00? 8:25? 8:40? Find a flick in no time  
with the Yahoo! Search movie showtime shortcut.

028294





"Hicks, Thomas"

03/27/2007 04:33 PM

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

cc

bcc

Subject Re: Voter ID

History:

✉ This message has been replied to.

Thank you.

Thomas Hicks, JD

Committee on House Administration

1309 Longworth House Office Building

Washington, DC 20515-6167

202-226-2341 (phone)

202-225-7664 (fax)

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

From: jlayson@eac.gov <jlayson@eac.gov>

To: Hicks, Thomas

Sent: Tue Mar 27 16:27:11 2007

Subject: Voter ID

Per your request kind sir, I think this is what you were looking for (Page 14. Also see pages 7,8 of the Eagleton paper. ). Go here to view the full report: "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."

Jeannie Layson

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028295

Jeannie Layson /EAC/GOV  
04/02/2007 10:55 AM

To tim.vercellotti [REDACTED], john.weingart [REDACTED]  
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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www.eac.gov

028296



"Thomas O'Neill"  
[REDACTED]

04/02/2007 11:41 AM

To jlayson@eac.gov

cc

bcc

Subject RE: the aftermath

History:

✉ This message has been forwarded.

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 [REDACTED]; john.weingart [REDACTED]

**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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028297



"Thomas O'Neill"  
[REDACTED]

04/02/2007 11:44 AM

To jlayson@eac.gov

cc

bcc

Subject RE: the aftermath

Jeannie, Please ignore and delete my previous email, which I sent to you in error.

Sorry for the confusion,

Tom O'Neill

---

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

**Sent:** Monday, April 02, 2007 10:56 AM

**To:** tim.vercellotti@eac.gov, john.weingart@eac.gov

**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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028298



to the December EAC report. Is that correct?

4) If I'm correct on questions 2 and 3, would it be accurate to say that readers of the December report cannot tell how much of that report does and does not reflect the original Wang/Serebrov findings?

5) I called earlier today requesting the Wang/Serebrov report, and you sent me the December EAC report. I am concerned that if I had not already been researching this closely, I would have thought that you'd sent me the Wang/Serebrov report and would have reported incorrectly that you had. Does the EAC have any comment on this manner of replying to press inquiries? (I contacted you to request the report after I read in the Statesman Journal of Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission didn't widely release the consultants' review, but makes it available on request." Did the EAC indeed give Ms. Cocco a copy of the "consultants' review"? Or has she misunderstood you in the way I'm concerned about?)

6) I understood you to say that the EAC did not release the Wang/Serebrov report in its original form because the EAC has to do due diligence and its staff is small. Do I understand you correctly? What form of due diligence does the EAC's staff routinely conduct on research that is contracted out to experts before that research is released? You mentioned "vetting" the research. What does that vetting entail?

Thank you for your time.

Meg Cox  
Freelance journalist  
Chicago  
~~██████████~~

028300

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.

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028301

Bryan Whitener /EAC/GOV  
04/11/2007 05:49 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.

bcc

Subject FYI - Today's media inquiries ( 4-11-07, Wed )

Commissioners:

Today we had the following media inquiries:

(1) Commissioner Hillman was interviewed by Allison Keyes of NPR about the fraud report. Commissioner Hillman explained the scope of the contract and that we asked the contractors to do two things: define voter fraud and intimidation and provide recommendations for future study on these topics. The commissioner pointed out that we did not ask them for conclusions. The reporter asked if it was true that EAC was trying to suppress information about voter intimidation among minorities. The commissioner said she had worked all her life to prevent minorities from being intimidated at the polls, and that she was very anxious to embark upon a more expansive study on this very topic. The commissioner said the agency was transparent, and talked about our public meetings and the transcripts and testimony that were available to the public through our website.

**NOTE:** The interview will be aired repeatedly this evening on the five minute newscast at the top and bottom of the hour. To listen, tune into WAMU 88.5 FM American University Radio or Listen Live.

(2) Laura Strickler of CBS News wanted to know how much we spent on the fraud report and the voter ID report. We told her the fraud and intimidation research contract was for \$147,106, and the voter ID and provisional voting research contract was \$560,002. We explained that 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.

(3) Rich Wolfe of USA Today is working on a story on what states will have to do if Rush Holt's bill is enacted. He asked for details on what states and vendors are currently facing in order to transition from the 2002 to the 2005 voting system guidelines which we provided. Brian Hancock also spoke with him on background about the testing and certification program. Mr. Wolf wanted to know more details regarding the differences in the VSS 2002 and the VVSG 2005. Brian explained that the most significant changes related to accessibility and usability. His real concern was what practical effect the VVSG would have on elections 2008. We noted that more than the VVSG, the changes brought about by the EAC implementation of our Testing and Certification Program might have just as big an impact. We noted that we would not be grandfathering any NASED systems, and that if State law required EAC certification, the manufacturers would need to bring their voting systems through the EAC program for full testing. We also explained the implementation date of December 2005 and that as of that date, no systems could apply for testing to the 2002 VSS. We also made sure that Mr. Wolf understood that the EAC program was voluntary and that participation in the EAC certification program would be driven ultimately by the statutes, regulations or procedures in each of the States.

(4) Paul DeGregorio called to let us know he was interviewed by Adam Stichko of the St. Louis Post Dispatch about the fraud report. The reporter wanted to know if the reaction was a major setback for the agency. Paul said no, and that as EAC noted in its statement, it was going to improve its internal operations. He pointed out that sometimes EAC makes tough decisions that both sides of the aisle might not agree upon. But regardless, he said the agency has a responsibility to conduct due diligence, and make the tough decisions. He talked about what we have accomplished and the assistance we provide -- best practices, quick starts, VVSG and certification program.

(5) Meg Cox a freelance writer in Chicago asked what prompted EAC's Statement Regarding Research &

028302



Contracting Policies and whether something new happened in Congress to prompt the statement. We said that the statement contains the information.

(6) Ross Tuttle of Los Angeles was in town today and is working on a documentary series titled "The Freedom Files" which includes an episode on voting rights. He asked for EAC's statement in response to the NYT article on the release of the report. We sent him today's statement.

(7) Kat Zambon of electionline.org asked if other states have a similar partnership arrangement that the Secretary of State in Georgia has with Kennesaw State University to provide technical support for the state's voting machines, as well as outreach, education, ballot design, training and consultation. We said this is the only one that we are aware of.

(8) John Gideon of Voters Unite and Brad Blog had the following questions, and Jeannie's responses follow:

A. How does the EAC see their position as a "clearinghouse" of information as required by HAVA? We follow the mandates of HAVA regarding our responsibilities to conduct studies about election administration issues. The results of those studies make up the "clearinghouse." B. What responsibility does the EAC have with regard to warning states about what may be security vulnerabilities in specific voting systems? The EAC certification program will collect anomaly reports (go here to view the form), which we will then investigate and share with election officials and the public. C. Chairwoman Davidson has said that the EAC's middle name is "Assistance". How does ignoring potential security issues fit into that theme? As I mentioned above, monitoring anomalies is part of our certification program. As we've discussed before, the system you are referring to was not certified by EAC. If the manufacturer of this system wants an EAC certification for this system, it would have to successfully complete our certification process and adhere to all of its rules. EAC did not grandfather any systems already in use (meaning that we did not automatically issue certifications or transfer NASED qualifications to existing systems), including the one you referenced. Mr. Gideon replied that he was amazed that instead of answering the questions I conflated the certification of voting systems with a security vulnerability that is in existence across the country. He asserted this issue had nothing to do with the EAC certification program. I replied that the very fact that we have set up a system to track voting system anomalies is evidence that we think monitoring performance is very important. Again, as we have discussed many times, we did not certify this voting system. If it successfully completes EAC's certification program in the future, then it would be subject to our rules and conditions, and if a problem occurs we would notify the election community and the public.

###

Jeannie Layson /EAC/GOV  
04/17/2007 12:43 PM

To "Paul DeGregorio"  
<pauldegregorio@gmail.com>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Post-Dispatch editorial 

I have executive director reports that I wrote in which he gives an update on all of the research we're working on, including voter ID and voter fraud. In addition the commissioners have talked about the research we're working on - including voter ID and voter fraud - in many different public settings, such as NASS, NASED, and Election Center. And we discussed these projects in depth in the 2005 and 2005 annual reports.

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[www.eac.gov](http://www.eac.gov)  
"Paul DeGregorio" <pauldegregorio@gmail.com>



"Paul DeGregorio"  
<pauldegregorio@gmail.com  
>  
04/17/2007 12:15 PM

To "jlayson@eac.gov" <jlayson@eac.gov>  
cc  
Subject Re: Post-Dispatch editorial

in doing a search on the EAC website, the first time there is a finding of the words "Eagleton" or "Rutgers" is the Feb 2007 meeting. I can't find where Tom discussed the project at one of our monthly public meetings.

On 4/17/07, [jlayson@eac.gov](mailto:jlayson@eac.gov) <[jlayson@eac.gov](mailto:jlayson@eac.gov)> wrote:

yes, you are correct. Eagleton focused on provisional voting.

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[www.eac.gov](http://www.eac.gov)

"Paul DeGregorio" <[pauldegregorio@gmail.com](mailto:pauldegregorio@gmail.com)>

04/17/2007 11:57 AM

To "[jlayson@eac.gov](mailto:jlayson@eac.gov)" <[jlayson@eac.gov](mailto:jlayson@eac.gov)>  
cc

028304

Subject Re: Post-Dispatch editorial

Jeannie,

In looking at the May 2006 agenda of the Standards Board and Board of Advisors, I see the topic listed as Provisional vote study not Voter ID. Do you know if the documents given to the Board members (and public) included the Voter ID research? I want to be 100% accurate in my response. Thanks.

Paul

On 4/17/07, [jlayson@eac.gov](mailto:jlayson@eac.gov) <[jlayson@eac.gov](mailto:jlayson@eac.gov)> wrote:

Good morning! Per your questions, the Standards Bd. and the Board of Advisors received an update on the voter ID report at a public meeting in May 2006. Go [here](#) . EAC held a public meeting in Feb. 2007 which the consultants testified and the commissioners asked questions about the methodology. Go [here](#) . In addition, the executive director routinely provides an update on research projects underway at public meetings in his executive director report. Since we post transcripts of our public meetings, these updates are also available on our website.

Also, it certainly was not a five year study. Considering that commissioners weren't appointed until Dec. 2003 and the first full year of EAC operations was 2004 with a budget of \$1.2 million, that is not even possible. We've only been in existence for about four years.

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"Paul DeGregorio" <[pauldegregorio@gmail.com](mailto:pauldegregorio@gmail.com)>

04/17/2007 10:03 AM

To "[jlayson@eac.gov](mailto:jlayson@eac.gov)" <[jlayson@eac.gov](mailto:jlayson@eac.gov)>

cc

Subject Post-Dispatch editorial

028305

Hi Jeannie,

The St. Louis Post-Dispatch has an editorial today that once again distorts and misreports the facts regarding the EAC voter ID and voter fraud reports. I believe the editorial should not go unanswered. Please review the attached letter to the editor and let me know what you think. There are some dates in my response that I need from you (when we discussed the voter ID report at our public meetings).

You can go here

<http://www.stltoday.com/stltoday/news/stories.nsf/editorialcommentary/story/6CB075FC49517AB2862572BF0081E1DB?OpenDocument> (or read below) to see the editorial. Thanks.

Paul



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### **Snipe hunting in Jeff City**

*Tuesday, Apr. 17 2007*

The Missouri Legislature's dogged efforts to crack down on voter fraud call to mind the hallowed tradition of the snipe hunt.

In a snipe hunt, gullible kids are taken out to the woods, handed sticks and gunny sacks and told to track down the elusive snipe. Meanwhile, their pals, who know a snipe is a bird of marsh and shore generally found nowhere near the woods, yuck it up.

Voter fraud is about as rare as snipe in most parts of the country, including Missouri. As evidence of that we have the testimony of (a) a five-year study by the federal Election Assistance Commission; (b) a report from the Missouri Secretary of State showing nobody in the state tried to vote with a fake I.D. in 2006; (c) Department of Justice statistics showing only 86 people were convicted of voter fraud-related crimes in the last five years, many of them on trivial errors; and (d) a federal judge's ruling last week that the justice department had failed to demonstrate that voter fraud had occurred in Missouri

028306

last year.

Undaunted by these facts, Republicans in the Legislature lurk about like Elmer Fudd with their gunny sacks and sticks, promoting bills to require voters to present photo identification before they're allowed to cast a ballot. They passed such a bill last year, but the courts threw it out as unfair to those who couldn't afford the cost and hassle involved in getting a photo I.D. card.

This year's versions of the photo I.D. bills would allow voters without photo I.D. to cast "provisional ballots," which may or may not get counted. So, despite the fact that a photo I.D. requirement would disenfranchise many voters in the cause of solving a problem that doesn't exist, the Missouri House could pass such a bill this week.

Evidence continues to mount that the hunt master for the national voter I.D. snipe hunt is none other than Karl Rove, President George W. Bush's deputy chief of staff and political guru. As The New York Times suggested Sunday, "The more we learn about the White House purge of United States attorneys, the more a single thread runs through it: the Bush administration's campaign to transform the minor problem of voter fraud into a supposed national scourge."

Not only did the administration suggest that some of the eight fired prosecutors had been insufficiently aggressive in pursuing voter fraud cases, it changed the wording of the Election Assistance Commission's findings on the voter fraud issue. What originally read, "there is widespread but not unanimous agreement that there is little polling place fraud" became "there is a great deal of debate on the pervasiveness of fraud."

Moreover, the release of the commission's report was delayed for nine months, during which period eight states, including Missouri, dealt with voter I.D. laws. Since the 3 percent to 4 percent of the electorate who don't have photo I.D.s tend to be poor, disabled or elderly voters, suppressing their vote would tend to help Republican candidates.

Investigators looking for evidence of fraud need look no further than the e-mail messages emanating from Mr. Rove's offices. Alas, thousands, perhaps millions, of those messages are now "missing." Perhaps Attorney General Alberto Gonzales will shed some light on the problem when his testimony before the Senate Judiciary Committee is rescheduled. In the meantime, Missouri lawmakers should put down the sticks and gunny sacks and back slowly out of the woods before their constituents realize they've been snookered, too.

---

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Paul DeGregorio  
[pauldegregorio@gmail.com](mailto:pauldegregorio@gmail.com)

--

Paul DeGregorio  
[pauldegregorio@gmail.com](mailto:pauldegregorio@gmail.com)

--

Paul DeGregorio  
[pauldegregorio@gmail.com](mailto:pauldegregorio@gmail.com)

Jeannie Layson /EAC/GOV  
04/19/2007 01:31 PM

To "Carney, Eliza"  
[REDACTED]  
cc  
bcc  
Subject RE: your interview with Donetta [REDACTED]

Eliza,

At the public meeting in February about the voter ID project, in which the consultants participated, Donetta instructed the executive director to provide recommendations on how to proceed with this project w/n 30 days. Here's her quote from the transcript: "And I'm going to request our executive director, within 30 days, to make a recommendation to the Commission on how we determine how to move forward and what the final outcome of this initial research will be, and we will notify everybody." Go here if you'd like to view the transcript.

The commission's decision to not adopt but to release all of the data was on March 30, which did occur after the March 7 hearing.

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Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
"Carney, Eliza" [REDACTED]



"Carney, Eliza"  
[REDACTED]  
04/19/2007 01:11 PM

To jlayson@eac.gov  
cc  
Subject RE: your interview with Donetta

Thanks.

I do have one question. Congressman Hinchey told me in an interview that the EAC had posted its Voter ID report on its web site shortly after he requested it at a March 7 Appropriations subcommittee hearing. The Brennan Center also pegs the posting of the Voter ID report to March 30, after the hearing. Chairwoman Davidson stated, however, that the Voter ID report had been released prior to the hearing. Can you clear up whether the report was posted before or after the March 7 hearing when it was requested?

Thanks for all your help with this.

-- Eliza.

---

From: jlayson@eac.gov [mailto:jlayson@eac.gov]

028309

**Sent:** Thu 4/19/2007 1:09 PM  
**To:** Carney, Eliza  
**Subject:** your interview with Donetta

Just wanted to make sure you got everything you needed...

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)

028310



**Bryan Whitener /EAC/GOV**  
04/30/2007 06:03 PM

To Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Bola Olu/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Curtis Crider/EAC/GOV@EAC, DeAnna M.

bcc

Subject FYI - Today's media inquiries ( 4-30-07, Mon )

Commissioners,

(1) Leslie Clark of the Miami Herald plans to attend tomorrow's public meeting. Today she asked whether Florida is required to abide by EAC reply to their request. We said that EAC is the cognizant agency for most of the HAVA funding programs. We said that EAC therefore has the responsibility to advise and instruct states regarding the appropriate use of these funds consistent with the provisions of HAVA as well as circulars developed by OMB Circulars A-87 which governs the use of federal funds to purchase goods for state and local governments.

(2) Dana Burke, News Editor for the Citizen in Webster, TX is working on a story regarding voter identification requirements in Texas. She said Democrats opposed to the new legislation have referred to EAC's voter ID study and point to a correlation between more stringent voter id requirements and lower voter turnout, especially among minority groups. She noticed EAC's statement regarding a request for review, asked if the study is considered valid and whether the assessment by opponents of the legislation is correct. We sent her the following two links and replied that our Inspector General is currently reviewing the circumstances surrounding this research and that when that process is complete we'll be glad to discuss it further.

**04/16/07 - EAC Requests Review of Voter ID , Vote Fraud & Voter Intimidation Research Projects**

**News Release : 3/30/07 - EAC to Launch Comprehensive Study of Voter ID Laws**

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028311



EAGLETON INSTITUTE OF POLITICS

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FAX COVER SHEET

Date: 4/19/07

To: Donetta Davidson

Fax Number: 202-566-1392

Phone Number: \_\_\_\_\_

Total Number of Pages (including cover sheet): 2

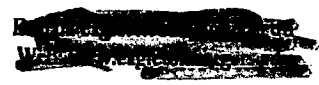
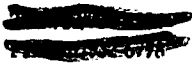
Comments:

dist. to AC/ED  
4/23/07

EC

From: John Wengert

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557



028312



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## EAGLETON INSTITUTE OF POLITICS

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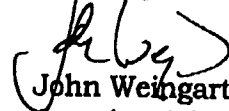
April 19, 2007

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

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.

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**

028314



**EAGLETON INSTITUTE OF POLITICS**

To: Adam Ambrogi, Counsel

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**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, Cummis, 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."

TRANSMISSION VERIFICATION REPORT

TIME : 04/19/2007 16:49  
NAME : ELECTION ASSIST COMM  
FAX : 2025661392  
TEL : 2025663100  
SER.# : I I I I I I I I I I I

DATE, TIME	04/19 16:48
FAX NO./NAME	918163914438
DURATION	00:01:30
PAGE(S)	09
RESULT	OK
MODE	STANDARD ECM



**U.S. ELECTION ASSISTANCE COMMISSION**

**FAX COVER SHEET**

Fax: 202/566-1392

Direct: 202/566-3100

Toll Free: 866-747-1471

DATE: 4/18/2007

TO: **Commissioner Donetta Davidson**

FAX NUMBER: **816-391-4438**

FROM: **Sheila Banks**

NUMBER OF PAGES (INCLUDING COVER PAGE): **9**

MESSAGE:

028321



## U.S. ELECTION ASSISTANCE COMMISSION

### FAX COVER SHEET

Fax: 202/566-3127

Direct: 202/566-3100

Toll Free: 866-747-1471

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DATE: November 23, 2005

TO: Craig Donsanto, U.S. Department of Justice

Fax Number: 202-514-3003

FROM: Peggy Sims

NUMBER OF PAGES (INCLUDING COVER PAGE): 3

MESSAGE

ORIGINAL TO FOLLOW BY MAIL.

U28324



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIR

November 23, 2005

Craig C. Donsanto  
Election Crimes Branch  
U.S. Department of Justice  
Bond Building  
1400 New York Avenue, NW, 12<sup>th</sup> Floor  
Washington, DC 20005

Dear Mr. Donsanto:

The U.S. Election Assistance Commission (EAC) has undertaken a short term project to research voting fraud and voter intimidation. As an expert in the prosecution of election crimes, your expertise and unique experience would be a valuable resource as we move forward. I am writing to ask if you will be available to advise and inform our efforts.

As you know, EAC is a federal agency established in accordance with section 201 of the Help America Vote Act of 2002 (HAVA), Public Law 107-252. HAVA requires EAC to conduct research regarding election administration issues. The election administration issues itemized in the statute include:

- Collecting nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for federal office [section 241(b)(6)]
- Identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)]

The EAC Board of Advisors, established in accordance with HAVA section 211, recommended that EAC place a high priority on these topics when initiating our research projects. Subsequently, EAC obtained the services of two consultants (Tova Wang and Job Serebrov) to:

- **Define Voting Fraud and Voter Intimidation** - develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of federal elections;
- **Research Available Resources** - perform background research (including federal and state administrative and case law review), identify

current activities of key government agencies, and civic and advocacy organizations regarding these topics, and summarize this research and all source documentation;

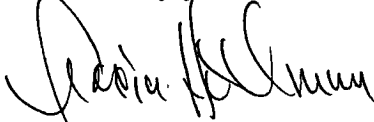
- **Establish a Project Working Group** - in consultation with EAC, establish a working group composed of key individuals and representatives of organizations knowledgeable about voting fraud and voter intimidation, provide a description of what constitutes voting fraud and voter intimidation and the results of the background research to the group, and convene the group to discuss potential avenues for future EAC research on this topic;
- **Produce a Report** - Provide a report to EAC summarizing the preliminary research and working group deliberations, including recommendations for future EAC research, if any;
- **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.

The EAC manager for this project is Peggy Sims. It would be most helpful if you could offer your expertise to Ms. Sims and our team of consultants. Ms. Sims will contact you to follow up on this request. If you are able to assist us, she will 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 be able to attend the working group meeting to contribute to its discussion. This meeting will likely be held in February 2006.

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.

Thank you so much for your consideration of this request.

Sincerely yours,



Gracia Hillman  
Chair



**U.S. Department of Justice**

**Criminal Division**

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*Washington, D.C. 20530*

December 1, 2005

The Honorable Garcia Hillman  
Chair  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
Washington, DC 20005

Dear Madam Chair:

I am in receipt of your letter of November 23, 2005 requesting my assistance in the development of a statutorily mandated report on voter fraud and intimidation that the Commission is currently undertaking.

I would be pleased, indeed honored, to assist you and the Commission in this matter and invite Ms. Sims of your staff to contact me at her convenience to discuss this matter further with me.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig C. Donsanto", written over a large, stylized flourish.

Craig C. Donsanto  
Director, Election Crimes Branch  
Public Integrity Section

028325