

**Briefing for
U. S. Election Assistance Commission**

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Analytic Tasks

- Identify how voter ID requirements were implemented around the county to provide a baseline for consideration of other approaches.
- Diagnose the problems and challenges of voter ID and hypothesize alternative approaches.
- Recommend alternative approaches
- Identify appropriate policy objectives by which to assess alternative approaches to voter ID

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Focus

- HAVA's narrow ID requirements drew attention to the issue and helped spark the current debate.
- National debate now goes beyond HAVA to focus on stricter ID for all would-be voters.
- Therefore our work takes a broad view of the issue.

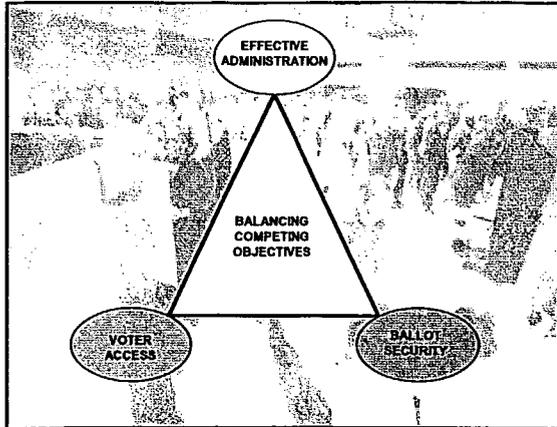
Voter ID and Ballot Integrity

- Voter ID – a critical step in protecting the integrity of the ballot by checking that the potential voter is eligible and permitting the voter to cast a ballot and one ballot only.
- Ensuring ballot integrity requires a perspective that takes in the entire voting process.
- Requires more than preventing the ineligible from voting.
- Also should ensure that all those who are eligible and want to vote can cast a ballot that counts.

Vote Fraud Excluded From This Analysis

- Assessing the effectiveness of voter ID in preventing vote fraud should logically include an estimate of the nature and frequency of vote fraud.
- EAC commissioned a separate analysis of the incidence of vote fraud.
- Our analysis does not 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.

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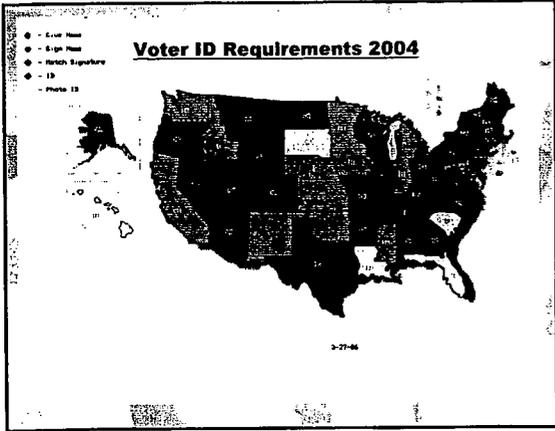
Method of analysis

- Collected and analyzed state statutes and regulations & classified states by their ID requirements in 2004.
- Tested the assumption that voter ID requirements would prove to be increasingly demanding on the voter with providing photo ID the most rigorous.
- County-level turnout data and Current Population Survey results
- Analyzed litigation for trends in judicial decisions
- Revised our work based on comments of PRG

Categories of Voter ID in the states, 2004

1. Give Name
2. Sign Name
3. Match Signature
4. Present ID
5. Photo ID

In 2004 no states required photo ID as the only ID to cast regular ballot.
May not reflect actual practice at the polling place.



Limitations of the data

- 2004 data do not permit conclusions about the effect of stricter photo ID laws such as those recently passed in Georgia and Indiana.
- The 5 states that required photo ID in 2004 allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

**Analysis of Turnout and
Voter ID Requirements**

Tim Vercellotti

Reports from the voters

- CPS in November 2004 asked respondents about their experience voting.
- Stricter ID requirements exert a negative effect on whether survey respondents said they voted.
- Decline from *Stating Name* to *Photo ID* was 2.5%.
- Small negative effect persists when controlling for other variables, such as battleground state and demographics.

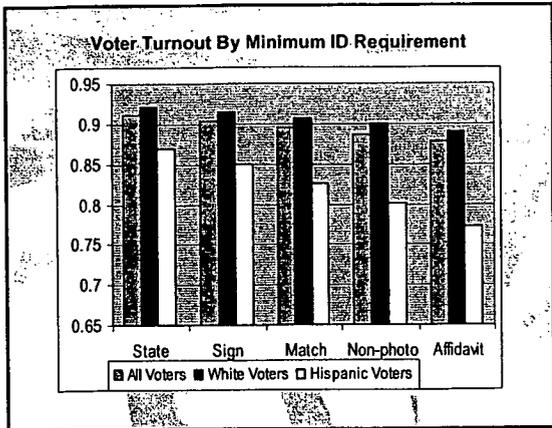
Effect of Stricter Voter ID requirements

Significant reduction in probability of voting by:

- Hispanic Voters (minus 9.7%)
- Voters below the poverty line
- Voters with less than a high-school education (-7.4%)
- Young voters (18-24)

No effect on the probability of voting by:

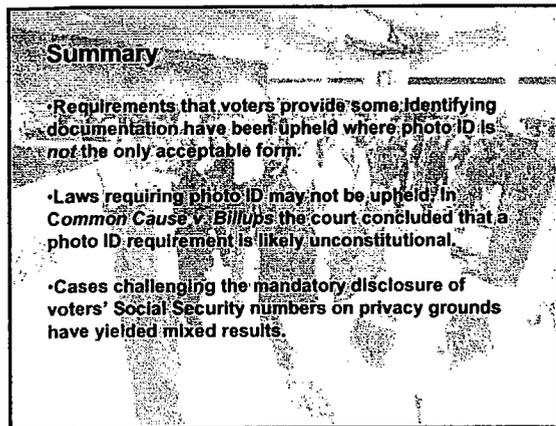
- African-American voters
- Voters with some college education





Trends in Litigation

Dan Tokaji

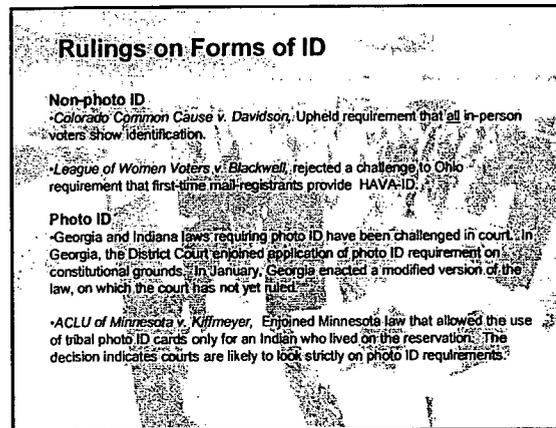


Summary

• Requirements that voters provide some identifying documentation have been upheld where photo ID is not the only acceptable form.

• Laws requiring photo ID may not be upheld. In *Common Cause v. Billups* the court concluded that a photo ID requirement is likely unconstitutional.

• Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.



Rulings on Forms of ID

Non-photo ID

• *Colorado Common Cause v. Davidson*, Upheld requirement that all in-person voters show identification.

• *League of Women Voters v. Blackwell*, rejected a challenge to Ohio requirement that first-time mail-registrants provide HAVA-ID.

Photo ID

• Georgia and Indiana laws requiring photo ID have been challenged in court. In Georgia, the District Court enjoined application of photo ID requirement on constitutional grounds. In January, Georgia enacted a modified version of the law, on which the court has not yet ruled.

• *ACLU of Minnesota v. Kilmeyer*, Enjoined Minnesota law that allowed the use of tribal photo ID cards only for an Indian who lived on the reservation. The decision indicates courts are likely to look strictly on photo ID requirements.

Privacy

Greninger v. Davis, (4th Cir. 1993) struck down on due process grounds a Virginia requirement that voters provide Social Security numbers to register. Public disclosure of the social security numbers was not necessary to prevent fraud.

BUT *McKay v. Thompson*, (6th Cir. 2000) rejected privacy challenges based to a Tennessee law requiring Social Security numbers for voter registration.

NVRA permits requiring only the minimum information needed to prevent duplicate voter registration and determine eligibility. The distinction between the two cases appears to be between the use of Social Security numbers for internal purposes, which was deemed permissible, and the disclosure of those numbers to the public, which took place in Virginia.

Conclusions

Courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot.

Courts will balance the legitimate interest in preventing election fraud against:

- Citizen's right to privacy
- Reasonableness of requirements for identify documents.

To forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

Conclusions, Recommendations and Discussion

Tom O'Neill

Policy Perspective

If the ID requirements that block ineligible voters from the polls also prevent eligible voters from casting a ballot because they lack ID, the integrity of the ballot may not have been improved.

Policy Perspective Questions

- Are voter ID requirements based on valid studies of the incidence of the vote fraud they aim to prevent?
- Is the increase in ballot security promised by stricter ID requirements reasonably proportional to the costs measured in both monetary and other terms?
- Can all citizens comply with the requirements easily?
- If a requirement is likely to reduce turnout of eligible voters, what steps can or will be taken to ameliorate the adverse consequences?
- Do the requirements have a neutral result on the composition of the qualified electorate?

Continuing uncertainty

- Dynamics of Voter ID requirements, that is how they work in practice, are not well understood.
- Policy process should recognize this uncertainty - less certainty, more humility.
- Improve debate by additional research sponsored by the EAC.

Conclusions

More information is needed about:

- The kinds of vote fraud that could be prevented by more rigorous voter ID so that it is possible to evaluate tradeoffs between ballot access and ballot integrity.
- Why potential voters may be required to cast a provisional ballot?
- The ID-related reasons for rejecting provisional ballots during the 2006 and subsequent elections.
- The experience of voters in meeting ID requirements.

The EAC should :

A. Recommend the publication of a "Voting Impact Statement" by states considering changing their voter ID requirements. It would estimate the number and demographics of

1. Eligible potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and
2. Assess the number of ineligible voters who will be prevented from voting by stricter ID requirements.

The EAC should:

B. Encourage or require the states to:

1. Collect and report reliable, credible information on the relationship between ballot access and ballot security.
2. Survey provisional voters (anonymously) to determine why they were unable to cast a regular ballot.
3. Conduct pre-election polling to ask voters what they know about the voter ID requirements.

4. Examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. Consider 3 factors:

- a. Convenience of voters;
- b. Total time allowed to evaluate ballots;
- c. Safe harbor provision in presidential elections.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 - 2 weeks	15	47.1%
> 2 weeks	14	60.8%

C. Advise the states that to forestall destabilizing challenges to election outcomes, voter ID requirements should be limited to the minimum needed to prevent duplicate registration and ensure eligibility.

Briefing for

U. S. Election Assistance Commission

April 3, 2006

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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.¹ The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

¹ 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.

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.²

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.

² 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.³ 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?⁴
- 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

³ 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.

⁴ 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?⁵

- 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?⁶
- 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

⁵ 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.

⁶ 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.

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.⁷ 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?

⁷ 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 ballots⁸, and the safe harbor provision in presidential elections.

⁸ 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.

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.

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.⁹

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

⁹ See Appendix ___ for the full report on voter ID and turnout.

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.

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 and 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-

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

that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category – voters with some college education).

Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

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- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.
- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

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effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

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4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*,

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Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

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suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

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5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

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.¹⁰ 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

¹⁰ 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.¹¹

¹¹ "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

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 -14th 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 -14th 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:
 - 14th 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, 14th 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
 - 15th 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
 - 14th 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
 - 15th 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 Issues¹²

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:

¹² 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)¹³. 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.¹⁴ 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

¹³ Litigation documents are available at the Election Law @ Moritz website.
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

¹⁴ 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.¹⁵ 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).

¹⁵ 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

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 14th 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).
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Appendix

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**Deliberative Process
Privilege**

Paul DeGregorio /EAC/GOV
03/27/2006 01:02 PM

To Juliet E. Thompson/EAC/GOV

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

Karen,

As you requested, here are my comments regarding the final draft Eagleton report on Voter ID.

While the report is generally acceptable, I don't believe the current draft is ready to be released.

I found some parts of the report 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 the workers 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. Many states and their polling places may not have long lines at the polls, and thus voters may not have the "limited time" suggested in the report. They don't support their suggestion with hard data on long voter lines and time limits on poll workers.

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 and the reasons why the Carter-Baker Commission comes to that conclusion.

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 requirements).

On page 9 and on 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 is not clear from the report. You may remember that Kim Brace discussed the VAP vs. CVAP issue with us extensively, and he 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 more stringent ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses, as Kim told us that VAP figures do not compensate for the non-citizen Hispanic voters that are included at a higher rate in the VAP (because as Kim stated most of the non-citizen population in the USA tends to be Hispanic).

I would like to know if the new Census report data on the 2004 election released on March 15, 2006 changes any of their perspectives. <http://www.census.gov/prod/2006pubs/p20-556.pdf>

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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%.

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.

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)
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006414

**Minutes of the Standards Board Meeting
United States Election Assistance Commission
May 23-24, 2006**

The following are the Minutes of the Standards Board Meeting of the United States Election Assistance Commission ("EAC") held on May 24, 2006, at the Hamilton Crowne Plaza Hotel, Hamilton Ballroom, 1001 14th Street, Washington, D.C. 20005. The meeting on May 23rd convened at 12:00 noon and ended at 5:30 p.m. The May 24th meeting convened at 10:00a.m. and convened at 3:40 p.m.

Call to order:

Chair called the meeting to order at 12:00 noon.

STANDARDS BOARD MEETING

Staff

Brian Hancock, Director of Voting System Testing & Certification
Peggy Simms, Election Research Specialist
Laiza Otero, EAC Research Associate
Karen Lynn-Dyson, EAC Research Manager
Juliet Thompson-Hodgkins, General Counsel
Edgardo Cortés, EAC Election Research Specialist

Presenters

Connie Schmidt, EAC consultant; Brit Williams, EAC consultant; Dr. Thad Hall, University of Utah; Doug Chapin, electionline.org

Proceedings:

Brief opening remarks from Vice Chairman Ray Martinez

- Goal of the meetings is to give a full briefing of all the research projects that the EAC is working on.

EAC Staff/Consultants Presentations:

Legal On-Line Information Clearinghouse

Presenter: Julie Thompson-Hodgkins, EAC General Counsel

Ms. Hodgkins discussed the need for a website to provide public access to centralized legal materials related to elections. It will give information on current statutes and cases in a user friendly format. The focus will be anything in the

state or federal legislative arena that would impact the legislations process. The cases will be briefed by the contractors so the person doing the search does not have to read the whole case. It will be a link to the EAC home page.

Design for Democracy

Presenter: Rick Korfe, American Institute of Graphic Art

The project is about effective design in election administration with a focus on clear communication and increasing citizen participation. The project aims at building expertise and using new research to create models for optical scan ballots and polling place signage. The group set up a room so that they may gain input from the attendees of the standards board.

Public Access Portals & Spanish and Asian Language Working Groups

Presenter: Edgardo Cortes, EAC Research Specialist

Publius.org:

EAC awarded a contract to Publius.org to conduct a study which will examine and create a best practices document about Public Access Portals. They reviewed 425 jurisdictions and started looking at what kind of information they provided on their websites. They have also conducted interviews with personnel and administrators that run those sites. From the research they found the most popular function was people wanting to check their registration status and their polling place site. The draft should be ready by mid to late summer.

Spanish and Asian Languages:

There have been many demographic changes throughout the country and pursuant to the Voting Rights Act, under Section 203, many jurisdictions who didn't before, now must provide information in alternate languages. The Commission decided to bring together working groups consisting of election administrators, advocacy groups and other individuals who deal with these issues first hand.

- First project was the Hispanic working group, as Spanish is the largest alternative language with which jurisdictions are dealing
- The second project was the Asian and Pacific Islander working group including: Japanese, Chinese, Korean, Vietnamese and Tagalog.
- Hopefully next year we will begin working on Native American languages
- Working on translation dictionaries
- Dialects have been a challenge, with regional translations for the same term.

Roll Call and welcoming of members and staff at 1:35 p.m.

Standards Board Plenary Session (Hamilton Ballroom), Chaired by Peggy Nighswonger, Chair, Executive Board

- Appointment of Parliamentarian
 - Secretary Kiffmeyer (MN) appointed
- Adoption of the agenda
- Review of Meeting Book Materials
- Briefing on re-adoption of Standards Board Charter
 - Motion for adoption by Rebecca Vigil Gorom
 - Kevin Kennedy seconds, motion is carried
- Election of Executive Board Vacancy

Afternoon Presentations

Draft Report on Provisional Voting (Hamilton Ballroom)

Presenters: Thomas O'Neill, Provisional Voting/Voter Identification Study; Tim Vercolotti, Eagleton Institute; Edward Foley, Election Law at Moritz (Ohio State University)

Surveyed 400 local officials and reviewed the EAC Election Day Survey. With that information analysis was done to find the issues that the states had with Provisional Voting and the litigation that ensued. HAVA allows considerable latitude on how to implement provisional voting and the variation among the states is enormous. The time taken to evaluate the ballots increased the accuracy and therefore the percentage of ballots actually counted.

- Lack of adequate staffing was found to be a problem with the smaller, lower income jurisdictions, and they reported more provisional ballots cast
- Difference between the rules on the books and the rules as they were enforced in practice.
- Most received provisional voting instructions from the states, but training and procedures was found to be lacking, ie: not going back to the original voter registration cards
- About 1.2 million (1% of the turnout) voted by provisional vote

Interim announcement after the afternoon break:

With 66 votes, Tonni Bartholomew, City Clerk of Troy, MI, was voted in as the newest member of the Executive Board to fill the vacancy.

Research on Poll Worker recruitment, training and retention (including college poll workers (Hamilton Ballroom))

Presenters: Jennifer Collins-Foley, IFES; Abby Horn, Cleveland State University

IFES is an International program offering technical systems to jurisdictions in the US, and vice versa. Foley has been working as the President of the Poll Worker Institute. They have been working with Cleveland State University over the past 13 months to compile 50 state laws as they apply to poll workers to compile field-tested practices in poll worker recruiting, training and retention.

- Conducted focus groups with the League of Women Voters and are developing a how-to practical guide book.
- Two major hindering factors to bringing in new poll workers are the age requirement and the residency requirement.
- League of Women Voters in a 3 month period did 19 focus groups in 17 jurisdictions. Their analysis came back with results stating that election officials often work on shoe string budgets, have limited staff and work in an environment which historically, before HAVA, didn't require much change.
- Found it was difficult to recruit poll workers in both low and very high income areas.
- It was also especially difficult to find tech savvy poll workers in economically disadvantaged areas.
- They will be testing this guidebook in 3 jurisdictions this summer: Hamilton County, OH; Santa Fe, NM; and Milwaukee, WI

Abigail Horn from the Centre for Election Integrity, Cleveland State University:

There are several reasons why getting college students involved is an ideal situation. Besides that fact that they are tech savvy, with flexible schedules, there is also the idea that if you get them involved at an early age, there is a good chance that they will remain in a real way in the democratic process. It may not be as a poll worker, but perhaps in other ways. There are some serious hurdles to overcome in implementing these programs, however.

- Students not registered in the same state or in the county (or precinct in some places) where they are living and where their college is.
 - In 2004 the EAC provided grants to 15 different colleges and non profits to run college poll worker programs.
 - They looked at statutory law in all 50 states and territories with all case law pertaining to college poll workers
 - Also looked at the administrative code and state constitutions

- An idea was building a course around citizenship or giving extra credit for the project.
- Another problem is retention and sustainability in college poll worker programs.
 - It's difficult to plan on having students having excused absences for working on election day. That can be a major administrative problem that would need to be planned 9-10 months ahead of time
- Training on campus should be very hands-on with an emphasis on intergenerational communication.
- Getting commitments from college students is somewhat challenging as sometimes last minute projects come up and they are unable to work.

Comments from the Board members--and shortly after the meeting was adjourned by Chair Nighswonger at 5:35 p.m.

DAY 2 OF THE STANDARDS BOARD MEETING

Meeting convened at 8:30 a.m. by Chair Nighswonger in the Hamilton Ballroom at the Crowne Plaza Hotel in Washington, DC.

Election Management Guidelines (intro by Brian Hancock, EAC)

Presenters: Connie Schmidt, Johnson County, KS election commissioner; Brit Williams, NASED Board

B. Hancock:

Up to this point there have been three editions of standards or guidelines for voting systems or voting equipment. NASED has been calling for the development of Election Management Guidelines to compliment the voting systems standards. The EAC agrees that this effort is overdue and we have entered into a contract with several groups that will spearhead a three year project.

C. Schmidt:

Need to define exactly what Election Management Guidelines are. We don't want to invent something, but rather collect information that's already in place out there and create a resource book for all of you and every local election and state administrator in the country. It should be a rather generic guidebook with which you can voluntarily implement pieces and parts.

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A project that will be distributed is the Quick Start Guide for Voting Systems Management which highlights some priority items.

Research on vote count/recount (Hamilton Ballroom)

Presenters: Dr. Thad Hall, University of Utah; Doug Chapin, Electionline.org

Vote counting systems should incorporate eight fundamental principles of vote counting: transparency, security, professionalism, accuracy, secrecy, timeliness, accountability and equality.

Recounts should perceive final certification of the result. They determine whether or not the numbers at the bottom of the page are the correct numbers for one of more given races. Procedures vary across the country and can be triggered either automatically, by request, by a candidate's party, or advocates or the others. And there is also variation on who pays for the recounts.

Using "benchmarking", they are looking for the most efficient practices to create baseline.

One major problem is that there are so many judges and clerks who have never read the election law which they have on the books, and when a highly contentious dispute comes along, it could be a difficult resolution.

Draft EAC Election Day Survey

Presenter: Laiza Otero, EAC Research Associate

In 2004 the EAC conducted the Election Day Survey (EDS) and also administered a survey on the impact of the National Voter Registration Act (NVRA) and on the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA). Each of the three surveys was administered to all 50 states, the District of Columbia, and the four U.S. Territories. The NVRA study was inherited from the Federal Election Commission when the EAC was created, but this was the first time the Election Day Survey was administered. The UOCAVA survey was only 10 questions and was required by the Help America Vote Act (HAVA).

- Some challenges for the UOCAVA study included states not responding to some question, creating some issues with data quality and the inability to have good analysis.
- The next version of the EDS will be available online so that states may respond in that way.

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- Question 4 of the UOCAVA survey will be omitted this time, and will probably be back on in 2008.

(Break in the program, time before the next presenter)
 Bill Campbell offers an amendment to the minutes”

“I want to add that we affixed to that the resolutions that were adopted by the Standards Board in the meeting in August either as an appendix or just an extension of minutes”

Chair Nighswonger: No objections. Amendment was added.

Research on Voting Fraud/Voter Intimidation

Presenter: Margaret Peggy Simms, EAC Research Specialist

This research is being done under HAVA's mandate and among the tasks listed in this statute is the development of nationwide statistics and methods of identifying, deterring, and investigating voter fraud in elections for federal office and investigating methods of voter intimidation.

EAC put together a bipartisan team of Joe Serebrov from Little Rock, AK and Tova Wang from the Century Foundation to conduct the background research.

- Research found that the literature on voter fraud is not truly systematic or scientific and the books and documents have little follow-up and many have political biases.
- Literature suggests that much of the intimidation is focused on minority communities.
- Upon interviewing members of the private and public sector involved in these issues agreed that absentee ballot fraud is the biggest problem.
- According to federal statutes, in order to prosecute intimidation, there has to be an economic or physical threat attached, where the consultants wanted to look at situations in which voters are being made to feel uncomfortable.
- Also mentioned were cases of voting by the deceased; vote buying (investigations concentrated in KY, IL, and WV), and misinformation campaigns
- The working group which gathered at the EAC suggested conducting risk analysis for voting fraud and voter intimidation.

Afternoon session: Resolutions

HAVA specifies that the Executive Board make recommendations to the full board on resolutions regarding standard support business. Adam Ambrogi read the resolution aloud to the Board.

Draft Resolution 2006-01: 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. Also, the EAC requires researchers to study and report on the practicality and expense of implementing such changes.

Draft Resolution 2006-02: The EAC Standards Board charter states that the annual cost for operating the Standards Board includes one quarter year staff for support and it has been determined that a need for such staffing is present. It is resolved that the EAC adhere to the provision of the charter and dedicate staff support. The EAC staff person shall provide early and timely notice to the Board relative to proposed meetings to allow active participation of such meetings.

Draft Resolution 2006-03: HAVA requires the EAC to report on finite and specific topics that are clearly listed in the law; whereas taxpayer dollars are being used to prepare these reports at a great deal of expense in terms of funding and time. These reports are funded to contractors. Resolved that the Standards Board recommends that the EAC adhere strictly to the plain language meaning of HAVA where it clearly lists specific topics that are to be reported on and the parameters thereof without assuming tangential issues or taking action that would lead to an increased project scope.

- Draft Resolution 2006-01 adopted
- Draft Resolution 2006-02 adopted
- Draft Resolution 2006-03 adopted with a quorum of 59

Draft Resolution 2006-04: Whereas the internet can be used to train poll workers, resolved that the EAC develop an internet training template that state and local jurisdictions can use to create and manage internet based poll worker training programs.

- Amendment: change "resolved" to say "resolved that the Standards Board recommends the US Election Assistance Commission development"
- Amendment adopted to the resolution
- The motion **fails** 30 to 25.

Meeting adjourned at 3:40 p.m.

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DRAFT

006423

U.S. ELECTION ASSISTANCE COMMISSION STANDARDS BOARD

Proposed Bylaws Change Instructions

The attached form is to be used for proposing changes to the U.S. Election Assistance Commission (EAC) Standards Board Bylaws. All proposed changes must be received by midnight, (*specific date will be inserted*) in order to be considered at the February 20 – 23, 2007 Standards Board meeting. Changes received after the cutoff date will be considered in the following meeting.

1. All proposed changes are to be made to the redraft Bylaws document, dated _____, as recommended by the Bylaws Committee and submitted with these instructions.
2. Complete the proposed bylaws change form. If necessary, use additional 8 1/2" x 11" sheets.
3. All submissions must be typed. The Standards Board Bylaws Committee assumes no responsibility for unclear or illegible submissions.
4. Submissions may be sent by email, postal mail or fax.
5. Proof read your submission carefully. Your change may be ruled improperly submitted if you quote the current document inaccurately. Also, if you are proposing a new section or subsection, give it the proper numerical or alphabetical designation.
6. ***You must submit each change on a separate form*** in order to propose changes to more than one section. If you are proposing a new article, it should be submitted in its entirety, rather than each section separately. This form may be photocopied as needed.
7. If the proposed change conflicts with or changes other sections, submit separate changes for all sections affected.
8. You may attach up to five pages of supporting documentation.
9. Submit the section or subsection to be revised in its entirety. Do not leave out unchanged paragraphs. Strike through all wording to be deleted. Underscore all wording to be added.
10. ***Failure to follow any of these instructions may result in your change being ruled improperly submitted.*** Please contact the EAC Designated Federal Officer (DFO) if you have questions about these instructions.

Submit proposed changes to:
Commissioner Gracia Hillman, DFO
United States Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005
Phone: (202) 566-1392 Fax: (202) 566-3128

006424

**STANDARDS BOARD
Proposed Bylaws Change Form**

This form is to be used for proposing changes to the EAC Standards Board Bylaws redraft document dated _____. All proposed changes must be received by midnight, (*specific date will be inserted*) in order to be considered at the February 20 – 23, 2007 Standards Board meeting. Changes received after the cutoff date will be considered at the following meeting.

An article is not subject to amendment by change, addition or repeal, until it has been approved by vote of the Standards Board.

Member's Name

Member's Contact Information

Telephone Number

Email

If amending an existing clause, please provide Article, Section [i.e. Article VI, Section 2(h)]

If proposing a new provision, cite where it should be placed in the current bylaws, and please provide Article, Section [i.e. Article VI, Section 2(h)]

THE FOLLOWING CHANGE OR ADDITION IS SUBMITTED:

REASON FOR CHANGE:

DESCRIBE SUPPORTING DOCUMENTATION SUBMITTED (if any):

IMPACT OF THE PROPOSED CHANGE:

11/09/06

006425

Bylaws Changes At A Glance 10/16/06

Article IV.

- Removed "Terms of Service" from Article title.
- Removed former paragraph 2.
- Added language from section 213(a) to last paragraph.

Article V.

- Reorganized nominations section into "Expired Terms" and "Vacancies Before the End of a Term."
- Fixed enumeration under c. Elections.
- Reorganized Executive Board Members Terms of Services and Vacancies into three sections: "Generally," "Initial Term," and "Subsequent Terms."
- Under meetings section, removed "simple" and "full" from paragraphs.
- Added clause concerning FACA.

Article VI.

- Removed Parliamentary section.
- Added Parliamentary language to Chair's duties.
- Re-worded Secretary's duties.
- Added notification duties to DFO Description and reorganized.

Article VII.

- Reorganized and changed language to track section 215 of HAVA.
- Removed Roberts Rules language.
- Reorganized section so that open meetings and closed meetings are in separate sections.
- Added clause indicating that minutes are part of the official government record.

Article VIII.

- Reorganized Article.

Article IX.

- Removed section 2bii. Changed time limitation in former 2biii from two days to seven.
- Removed paragraph 3d.

Article X.

- Changed language in former paragraph 1.
- Reorganized article.

Article XII.

- Renumbered and added language from page 561 of Roberts Rules.

Article XIII.

- Renamed from “Section” and renumbered.

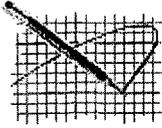
Article XIV.

- Renamed from “Section.”

Generally: Added signature block for Chair and DFO. Added an update date block after the signature block.

006427

**Deliberative Process
Privilege**



Tamar Nedzar /EAC/GOV

10/16/2006 01:17 PM

To Gracia Hillman/EAC/GOV@EAC

cc Sheila A. Banks/EAC/GOV@EAC

bcc

Subject Standards Board Bylaws

Commissioner Hillman,

Attached please find:

- 1) The latest draft of the Standards Board Bylaws.
- 2) An "At A Glance" document detailing the changes to the previous draft.
- 3) A draft resolution for the Standards Board to meet once a year.

I am still looking into how to describe the new draft without calling it a substitution.

Please let me know if there are additional edits the Bylaws Committee would like me to make. I will be in the office tomorrow, Thursday, and Friday, but am available by phone and email in the interim.

Thank you,

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-1707
<http://www.eac.gov>
TNedzar@eac.gov



Draft Bylaws 10116006_TN.doc



Bylaws Changes At A Glance 10_16_06.doc



Bylaws Resolution 10162006.doc

006428

**Deliberative Process
Privilege**



Tamar Nedzar /EAC/GOV

09/05/2006 01:27 PM

To Sheila A. Banks/EAC/GOV@EAC

cc

bcc

Subject Executive Board Nominations Process

Sheila,

Commissioner Hillman expressed some concern about the language in one of the clauses that discusses procedures for nominating replacements for the Executive Board. I agree that the language as it is written may be unworkable for the Board. I suggest changing the language in Article V, Section 1, paragraph b, clause ii to:

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.

Any thoughts?

Thanks,

Tamar Nedzar
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<http://www.eac.gov>
TNedzar@eac.gov

006429

To: Juliet Hodgkins, General Counsel
From: Tamar Nedzar
Date: 1/20/07
Subject: Guidance for CFR Submissions

I. Background:

This memorandum reviews the actions necessary to reserve and publish the United States Election Assistance Commission's (EAC) administrative and program regulations in the Code of Federal Regulations (CFR).

II. Establishment:

Agencies wishing to publish in the CFR must consult with personnel at the Federal Register (FR) to reserve sections of the code for their use. The EAC has been given an assignment in Title 11, Chapter 2, Parts 9400-9499 of the CFR. Chapter 2 of Title 11 currently houses the Federal Election Commission (FEC) and its regulations. To accept the designation, the EAC must send a letter to FR on the EAC Executive Director's letterhead formalizing its placement and designating three primary and three alternate officers to work with FR staff.¹

The EAC must designate a minimum of one liaison officer, one certifying officer, and one authorizing officer; in addition to a minimum of one alternate for each position. All officers must be federal employees and may not be contract employees. The same person may fill several positions as long as the primary and alternate positions for one category are not filled by the same person. For example, the General Counsel could be the liaison officer, alternate certifying officer, and authorizing officer. The General Counsel could not, however be both the primary and alternate liaison officer.

¹ A draft of EAC's acceptance letter is available on the T: drive.

The following is a description of each officer's duties:

- A. Liaison Officer: The person holding this position acts as the agency's official voice with FR for publication matters. All special handling requests, including emergencies, deferred, or immediate publishing, must go through the liaison officer or alternate liaison officer. The liaison officer is also required to resolve document questions and ensure that agency documents meet FR publication requirements².
- B. Certifying Officer: The person holding this position certifies that any copies of originals submitted to FR are exact copies. In addition, for electronic submissions, the certifying officer certifies that electronic files are exact and official copies of documents.
- C. Authorizing Officer: The person holding this position distributes paper copies to EAC employees when necessary and handles all requests for hard copies.

III. Structure:

The FR issued a handbook that instructs federal agencies on how to structure CFR regulations and format documents for inclusion in the FR³. The CFR units from most general to most specific are Title, Chapter, Part, and Section. A section can further be divided by six levels⁴:

Level 1: (a), (b), (c)

Level 2: (1), (2), (3)

Level 3: (i), (ii), (iii)

Level 4: (A), (B), (C)

² See 1 CFR 16.1.

³ <http://www.archives.gov/federal-register/write/handbook/>

⁴ The FR *strongly* recommends that agencies do not use more than three levels below the section level.

Level 5: (1), (2), (3)

Level 6: (i), (ii), (iii)

The FR does not permit the use of hyphenated numbers (ex. 117-2.1) or numbers with alpha characters (ex. part 115a). Any deviation from the standard CFR structure must be approved in writing before publication.

The FR recommends that agencies reserve parts in between initial designations as it is extremely difficult to go back and re-number parts once they are assigned. For example, the EAC could call part 9401 “Administration,” label parts 9402-9404 as “Reserved,” and call part 9405 “Voting Systems,” therefore keeping open the unused numbers for future additions if logic dictates that program areas should be located after Administration and before Voting Systems. The EAC may wish to reference regulations issued by the Department of Homeland Security for examples of how a new agency has numbered its parts.

IV. National Voter Registration Act of 1993:

Section 802 of the Help America Vote Act transferred functions previously performed by the Federal Election Commission (FEC) under the National Voter Registration Act of 1993 (NVRA) to the EAC. Accordingly, the EAC must publish regulations relating to NVRA in its section of the CFR.

The preferred method for moving regulations previously under another section is to do a joint rulemaking. To remove NVRA from Chapter 1 and add it to Chapter 2, an authorized official from each agency must sign a jointly issued or common rule document. The EAC’s liaison officer must consult with FR staff in advance for assistance in preparing jointly issued documents.

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Simultaneously with the joint rulemaking moving NVRA regulations, the EAC can amend NVRA to reflect agency decisions and changes to NVRA regulations since the EAC was granted authority under the Act. The EAC may wish to reference regulations issued by the Presidio Trust for an example of a joint rulemaking that removes parts and places them elsewhere.

V. Voluntary Voting System Guidelines and Similar Guidance:

In 2005, the EAC adopted its first version of the Voluntary Voting System Guidelines (VVSG), which revised the FEC's Voting System Standards. The VVSG makes hardware and software recommendations for voting systems based on existing law and best practices. While the guidance is voluntary, some states make compliance with VVSG recommendations a requirement by statute or rule. In addition, the EAC's Voting System Certification Program will only allow voting systems to receive EAC certification if they conform to the VVSG. It is possible that several versions of the VVSG may be acceptable for EAC certification purposes at the same time. Therefore, the EAC must have some manner of including all "live" versions of the VVSG in the CFR.

There are two ways to the EAC may wish to include the VVSG in the CFR. First, the EAC can reformat the VVSG and re-submit it for publication to conform to FR's numbering scheme. The benefit of resubmitting the VVSG would be that once the document is re-formatted and re-published, any amendments to the document may be done in a piece-meal fashion instead of having to re-publish each version. However, this may cause confusion as to which version of the VVSG is live at any given time. In addition, re-formatting and re-publishing will be costly to the agency.

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The EAC may instead wish to incorporate the VVSG by reference. The benefit of incorporating the VVSG by reference is that amendments to the document can be noted by amending the incorporation by reference statement instead of re-publishing each change. The EAC may wish to reference regulations issued by the Federal Aviation Administration for examples of incorporation by reference and codification of certification programs.

VI. Recommendations:

- 1) The EAC should designate personnel to the three types of officer positions and send a letter to the FR accepting its sections in the CFR.
- 2) The EAC should make a list of program areas for publication in the CFR and create a superstructure for its parts and subparts.
- 3) The EAC should contact the General Counsel's office at FEC to coordinate removing NVRA regulations from their 11 CFR 1 to 11 CFR 2. The removal should coincide with amendments to NVRA regulations that EAC deems appropriate and necessary.
- 4) The EAC should conference with the FR's general counsel to obtain guidance concerning incorporation by reference and the best way to proceed with large guidance documents such as the VVSG.

006434

BYLAWS
OF THE UNITED STATES ELECTION ASSISTANCE COMMISSION STANDARDS
BOARD

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.

Article I: Authority

1. Pursuant to the Federal Advisory Committee Act and the Help America Vote Act of 2002 (HAVA) [Public Law 107-252], 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 contained in the report submitted under Section 242(b) of Title II of HAVA.
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: Membership of the Standards Board

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.

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 1st 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) 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 at 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 or part of a Citizen Board. The ballot shall also include concise biographical information for each candidate.
 - iii. 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 term.
 - 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.

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 EAC.
 - d. Call meetings of the Executive Board and Standards Board in consultation with the EAC.
 - 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.
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. Notify Standards Board members of meetings and pending Standards Board business matters.
 - b. Maintain the minutes at Executive Board and Standards Board meetings, with assistance from the DFO.
 - c. Transmit a copy of Executive Board and Standards Board meeting minutes to the EAC for recordkeeping and storage.
 - d. Assist the Chair at meetings and from time to time as the Chair may designate.
 4. Parliamentarian. The Parliamentarian shall:
 - a. Ensure that all meetings are run in accordance with Roberts Rules of Order.
 - b. Fulfill the Secretary's duties 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.
 - 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 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.
 6. 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. Standards Board Meetings.

- a. The Standards Board shall meet as required, but in no event less than two (2) times in each calendar year. Meetings shall be called by the DFO in consultation with the Executive Board.
 - b. 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.
 - c. Standards Board members and members of the public may submit agenda items to the DFO or Executive Board Chair.
 - d. All meetings of the Standards Board shall be conducted in accordance with Roberts Rules of Order.
 - e.
- 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.

- f. 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).
 - iv. 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.
 - v. 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.
2. Executive Board of the Standards Board Meetings.
- a.

Executive Board Meetings:

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2. Have authority to call a Executive Board meeting in writing by two members' filing the original call of the meeting with the DFO, including the stated reason for calling the meeting.

1. A majority of the members of the Executive Board shall be present for a quorum.

2. 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 member may attend and participate in any and all discussions but may not vote.

Article VIII. Quorum and Proxy Voting

A. A quorum shall be established when fifty percent plus one of the membership of the Standards Board is present for the meeting or are present by proxy.

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.

Article IX. Standing Committees

Clause about including diverse groups (from nominations section above) here.

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.

As deemed necessary, the Standards Board may convene hearings or subcommittees to support

the Board's functions.

Ad-Hoc Committees. Standards Board member proposes resolution, once accepted by Standards Board, Executive Board can appoint.

Article X. Amendments

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.

2. Members of the Standards Board 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 agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the board.

Section IX: Effective Date

1. 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.

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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 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 1st 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.
- 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:
 - 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 be 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.

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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

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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.

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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 1st 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.

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:
 - 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.

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- 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 vouchers for pre-approved expenditures.

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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.

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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.
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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.
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- 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.

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 - 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.
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 - 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.

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Article X. Amendments

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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

Deleted: <#>The bylaws may be amended based on a two-thirds (2/3) vote of the members present and voting at any Standards Board meeting. ¶

<#>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. ¶

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