

Juliet E. Hodgkins/EAC/GOV

03/16/2007 04:27 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [REDACTED]
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
bcc

Subject Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.



Voter ID edited 31507- track changes with Eagleton comments.doc



Voter ID edited 31507- changes accepted with Eagleton comments.doc

Juliet Thompson Hodgkins
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United States Election Assistance Commission
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00666

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document¹ was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates² and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.³ The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data – aggregate turnout data at the county level for each state and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau – the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

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The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues

¹ In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

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² The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

³ The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's ~~consideration of~~ efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the research data, analysis, and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements, and the potential variation into determine if these laws have an impact on turnout rates based on the type of voter identification requirements. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.⁴ Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or

⁴ See EAC Public Testimony, February 8, 2007, page 109.

her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

EAC Statement on Future Study of Voter Identification Requirements

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The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document¹ was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates² and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.³

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

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¹ In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

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³ The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.⁴ Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

⁴ See EAC Public Testimony, February 8, 2007, page 109.

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- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

Juliet E. Hodgkins/EAC/GOV

03/22/2007 03:10 PM

To DeAnna M. Smith/EAC/GOV@EAC

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

bcc

Subject Tally vote memo

DeAnna,

Here is the proposed memo to go with the Tally Vote on the voter ID issue. I have also sent this to Tom, so that he can look at it.



memo to commissioners on voter id issue.doc

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006670



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

MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez
FROM: Thomas R. Wilkey
DATE: March 22, 2007
RE: Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

BACKGROUND

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

The Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. However, the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements raise concerns. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians.

ANALYSIS

As you may know, the Deliberative Process Privilege to the Freedom of Information Act (FOIA) protects intra-agency documents that are (1) pre-decisional in nature and (2) part of the

deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and contractors (“consultants”) constitute intra-agency documents.¹ This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails.² The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants.³ Ultimately, deliberative documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors, (2) to protect against premature disclosure of proposed policies and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.⁴

The draft report presented by Eagleton represents one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by Eagleton in order to aid the EAC’s Commissioners in their decisions regarding voter identification requirements. The contractor had no personal interest in their submissions and had no agency decision-making authority. Eagleton was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when a report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The Voter Identification draft report was created by Eagleton in conjunction with the Moritz College of Law (Ohio State University) to “...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures.” The stated objective of the contract was to:

...obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

Eagleton was provided guidance, information, and were directed by EAC personnel. The final product that they were to deliver (draft report) was identified in the contract as “a guidance document for EAC adoption.” Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

EAC’s interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy and decision. It would be irresponsible for

¹ Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) (Citing Harry E. Hoover v. Dept. of the Interior, 611 F.2d 1132, at 1138 (1980); Lead Industries Assn. v. OSHA, 610 F.2d 70, 83 (C.A.5 1980) (applying exemption 5 to draft reports prepared by contractors); and Government Land Bank v. GSA, 671 F.2d 663, 665 (CA1 1982)); See also Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

² Klamath, at 10.

³ Hoover, 611 F.2d at 1138.

⁴ NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.

EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC, along with working and peer review groups have conducted this review of the draft voter identification report provided by Eagleton. EAC found that the draft report raised more questions than it answered, because of the limited data that was analyzed and the analysis that was conducted on those data.

As a part of its review of the draft report, EAC staff have determined that the contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements are a first step in the Commission's efforts to study the possible impact of voter identification requirements. In addition, staff recommends a series of next steps for future study and analysis of voter identification requirements, including:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

RECOMMENDATIONS:

- (1) EAC should exercise its authority in making policy concerning the study of voter identification requirements and decline to adopt the draft report provided by Eagleton;
- (2) EAC should adopt the recommendations of staff regarding future study and analysis of voter identification requirements;
- (3) EAC should adopt and publish the attached statement concerning the research and draft report presented by Eagleton as well as the future plans of EAC to conduct research in this area; and
- (4) EAC should publish the data, information and draft report provided by Eagleton.

Juliet E. Hodgkins/EAC/GOV
03/22/2007 11:36 AM

To DeAnna M. Smith/EAC/GOV@EAC
cc
bcc
Subject Tally Vote

DeAnna,

Can you get this tally vote ready for Tom's signature? It needs a memo, which we should discuss. Perhaps, I will try to draft something in a few minutes. Anyway, just wanted to get this one in the hopper.

Juliet T. Hodgkins
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—— Forwarded by Juliet E. Hodgkins/EAC/GOV on 03/22/2007 11:29 AM ——

Caroline C. Hunter/EAC/GOV
03/21/2007 05:26 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subject Re: One more time

Looks good to me.

Caroline C. Hunter
Commissioner
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Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
03/21/2007 05:02 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC
cc jlayson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC
Subject One more time

006675

I think that Karen and I have captured all of the changes that needed to be made including answering the question posed by Commissioner Hillman regarding footnote #2.

Please take one final look.



Voter ID edited 32107- with changed footnote.doc

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006676

Juliet E. Hodgkins/EAC/GOV
03/19/2007 02:09 PM

To DeAnna M. Smith/EAC/GOV@EAC
cc
bcc
Subject Final Voter Fraud report and appendixes

are on the EAC website.

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006677

Juliet E. Hodgkins/EAC/GOV
03/19/2007 02:08 PM

To DeAnna M. Smith/EAC/GOV@EAC
cc
bcc
Subject Draft Fraud and Intimidation Report



VF-VI Final Rept-draft.doc

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006678

Juliet E. Hodgkins/EAC/GOV
03/28/2007 12:07 PM

To Caroline C. Hunter/EAC/GOV@EAC, jlayson@eac.gov
cc
bcc
Subject Latest Statement

both of you have asked for this document...



Voter ID edited 32107- with changed footnote.doc

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006679

EAC Study of Voter Identification Requirements

Background

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EAC Declines to Adopt Draft Report

¹ In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

² The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

³ The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

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Further EAC Study on Voter Identification Requirements

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

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⁴ See Transcript of EAC Public Meeting, February 8, 2007, page 109.

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DRAFT

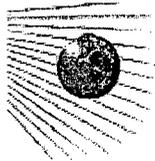
**Deliberative Process
Privilege**

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

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

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

Juliet Thompson Hodgkins
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Paul DeGregorio/EAC/GOV



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

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

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

Sent from my BlackBerry Wireless Handheld

006686

**Deliberative Process
Privilege**

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

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

Subject Draft Fraud/Intimidation Report with Executive Summary

Commissioners,

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



Voter Fraud & Intimidation Report - 120106.doc

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

Juliet Thompson Hodgkins
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United States Election Assistance Commission
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EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY**EXECUTIVE SUMMARY**

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “Election crimes” are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.

INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,¹ who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

¹ Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the
Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of
the Secretary of State
Member, EAC Standards Board

J.R. Perez
Guadalupe County Elections
Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee
for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to National Republican
Campaign Committees and Republican
candidates

Robert Bauer
Chair of the Political Law Practice at the
law firm of Perkins Coie, District of
Columbia
National Counsel for Voter Protection,
Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St
Louis, Missouri
National Counsel to the American
Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief,
Voting Section, Civil Rights Division,
U.S. Department of Justice

Technical Advisor:

Craig Donsanto
Director, Election Crimes Branch, U.S.
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

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- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.
- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan
Center

William Groth
Attorney for the plaintiffs in the Indiana
voter identification litigation

Lori Minnite
Barnard College, Columbia University

Neil Bradley
ACLU Voting Rights Project

Pat Rogers
Attorney, New Mexico

Nina Perales
Counsel,
Mexican American Legal Defense and
Education Fund

Rebecca Vigil-Giron
Secretary of State, New Mexico

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Stephen Ansolobhere
Massachusetts Institute of Technology

Chandler Davidson
Rice University

Tracey Campbell

Author, *Deliver the Vote*

Douglas Webber

Assistant Attorney General, Indiana

Heather Dawn Thompson

Director of Government Relations,
National Congress of American Indians

Jason Torchinsky

Assistant General Counsel,
American Center for Voting Rights

Robin DeJarnette

Executive Director,
American Center for Voting Rights

Harry Van Sickle

Commissioner of Elections,
Pennsylvania

Tony Sirvello

Executive Director
International Association of Clerks,
Recorders, Election Officials and
Treasurers

Joseph Sandler

Counsel
Democratic National Committee

John Ravitz

Executive Director
New York City Board of Elections

Sharon Priest

Former Secretary of State, Arkansas

Kevin Kennedy

Executive Director
State Board of Elections, Wisconsin

Evelyn Stratton

Justice
Supreme Court of Ohio

Joseph Rich

Former Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Craig Donsanto

Director, Public Integrity Section
U.S. Department of Justice

John Tanner

Chief
Voting Section, Civil Rights Division
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

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voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election-related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

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- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

Analyze Survey Data in Light of State Laws and Procedures

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

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APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG

Available on EAC Website, www.eac.gov.

APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES

Available on EAC Website, www.eac.gov.

APPENDIX 3 – SUMMARIES OF INTERVIEWS

Available on EAC Website, www.eac.gov.

APPENDIX 4 – SUMMARIES OF CASES REVIEWED

Available on EAC Website, www.eac.gov.

Juliet E.
Thompson-Hodgkins/EAC/G
OV

03/16/2006 03:28 PM

To Paul DeGregorio/EAC/GOV@EAC

cc

bcc

Subject Thor Hearn

Couple of questions:

Do you want us to draft a response as if it were coming from you? Or do you want us to respond directly?

How in depth do you want us to go? I see Thor as a bit of a tar baby, in that he will come back with other arguments or continue to monopolize our time with questions, positions, etc. I also see the need to shut him down and have something in writing responding to his concerns and arguments. What is your thought on how far to go with this?

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

006726

**Deliberative Process
Privilege**

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

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

Subject Revised - Draft -- Voting Fraud/Voter Intimidation Report

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

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



Voter Fraud & Intimidation Report - 112906.doc

Juliet Thompson Hodgkins
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006708

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,¹ who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

¹ Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

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fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the
Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of
the Secretary of State
Member, EAC Standards Board

J.R. Perez
Guadalupe County Elections
Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee
for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to National Republican
Campaign Committees and Republican
candidates

Robert Bauer
Chair of the Political Law Practice at the
law firm of Perkins Coie, District of
Columbia
National Counsel for Voter Protection,
Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St
Louis, Missouri
National Counsel to the American
Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief,
Voting Section, Civil Rights Division,
U.S. Department of Justice

Technical Advisor:

Craig Donsanto
Director, Election Crimes Branch, U.S.
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan
Center

William Groth
Attorney for the plaintiffs in the Indiana
voter identification litigation

Lori Minnite
Barnard College, Columbia University

Neil Bradley
ACLU Voting Rights Project

Pat Rogers
Attorney, New Mexico

Nina Perales
Counsel,
Mexican American Legal Defense and
Education Fund

Rebecca Vigil-Giron
Secretary of State, New Mexico

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Stephen Ansolobhere
Massachusetts Institute of Technology

Chandler Davidson
Rice University

Tracey Campbell

Author, *Deliver the Vote*

Douglas Webber

Assistant Attorney General, Indiana

Heather Dawn Thompson

Director of Government Relations,
National Congress of American Indians

Jason Torchinsky

Assistant General Counsel,
American Center for Voting Rights

Robin DeJarnette

Executive Director,
American Center for Voting Rights

Harry Van Sickle

Commissioner of Elections,
Pennsylvania

Tony Sirvello

Executive Director
International Association of Clerks,
Recorders, Election Officials and
Treasurers

Joseph Sandler

Counsel
Democratic National Committee

John Ravitz

Executive Director
New York City Board of Elections

Sharon Priest

Former Secretary of State, Arkansas

Kevin Kennedy

Executive Director
State Board of Elections, Wisconsin

Evelyn Stratton

Justice
Supreme Court of Ohio

Joseph Rich

Former Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Craig Donsanto

Director, Public Integrity Section
U.S. Department of Justice

John Tanner

Director
Voting Section, Civil Rights Division
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

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voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful), it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.

Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to

case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;

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- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;

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- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

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Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such

practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator

being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

Analyze Survey Data in Light of State Laws and Procedures

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

006725

Juliet E. Hodgkins/EAC/GOV
03/16/2007 01:38 PM

To Gracia Hillman/EAC/GOV@EAC
cc
bcc
Subject Re: Voter ID statement

Because I forgot to put her on.

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



Gracia Hillman/EAC/GOV
03/16/2007 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc Jeannie Layson/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003
Subject Re: Voter ID statement

Why is it that Karen is not in the email loop on this circulation?

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

From: Juliet E. Hodgkins
Sent: 03/16/2007 09:41 AM EDT
To: Donetta Davidson; Gracia Hillman; Caroline Hunter;
Cc: Thomas Wilkey; Jeannie Layson
Subject: Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Gracia Hillman/EAC/GOV]
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Gracia Hillman/EAC/GOV]

Juliet Thompson Hodgkins
General Counsel

006727

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

006728

Juliet E. Hodgkins/EAC/GOV
12/11/2006 11:37 AM

To Gracia Hillman/EAC/GOV@EAC
cc
bcc
Subject Re: Draft response to Tova Wang 

since it was addressed to the Commissioners, I would suggest that the Commissioners should respond (either collectively or through the Chairman). I will send your edits to your colleagues to see if we have consensus on this response.

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



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

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

Julie and Jeannie:

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

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?



Tova Wang, Dec06.doc

Gracia M. Hillman
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006730

**Deliberative Process
Privilege**

Juliet E. Hodgkins/EAC/GOV
03/16/2007 04:27 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [REDACTED]
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
bcc

Subject Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.



Voter ID edited 31507- track changes with Eagleton comments.doc



Voter ID edited 31507- changes accepted with Eagleton comments.doc

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006731

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates² and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.³ The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data – aggregate turnout data at the county level for each state and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau – the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

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The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues

¹ In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

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² The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

³ The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's consideration of efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the research data, analysis, and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation into determining if these laws have an impact on turnout rates based on the type of voter identification requirements. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers. Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or

⁴ See EAC Public Testimony, February 8, 2007, page 109.

her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics (“Contractor”) to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document, was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates² and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.³

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor’s testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC’s website, www.eac.gov.

EAC Recommendations for further study and next steps

¹ In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

² The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

³ The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.⁴ Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

⁴ See EAC Public Testimony, February 8, 2007, page 109.

- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

**Deliberative Process
Privilege**

Juliet E. Hodgkins/EAC/GOV
03/16/2007 09:41 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, rosemaryrod2003@yahoo.com
cc Thomas R. Wilkey/EAC/GOV@EAC, jlayson@eac.gov
bcc

Subject Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.



Voter ID edited 31507- track changes.doc Voter ID edited 31507- changes accepted.doc

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

006738

EAC Statement on Future Study of Voter Identification Requirements

Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election—November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates¹ and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.² The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data—aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau—the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, www.eac.gov.

¹ The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

² The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC Recommendations for further study and next steps

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's ~~consideration of~~ efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the ~~research data, analysis, and statistical methodology the Contractor chose to employ in order to~~ analyze voter identification requirements and the potential variation into determine if these laws have an impact on turnout rates based on the type of voter identification requirements. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data on that point) was conducted that produced only some evidence of correlation between voter identification requirements and turn-out. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. ~~The Contractor and the EAC agree that the report raises more questions than provides answers.~~ Thus, EAC will not adopt the Contractor's study and EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the ~~will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.~~

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

³ See EAC Public Testimony, February 8, 2007, page 109.

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- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
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- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

EAC Statement on Future Study of Voter Identification Requirements

Background

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The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign their name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates¹ and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.²

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EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

¹ The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

² The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.³ Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be

³ See EAC Public Testimony, February 8, 2007, page 109.

covered in the study and timelines for completing an EAC study on voter identification.

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

DRAFT

**Deliberative Process
Privilege**

Juliet E. Hodgkins/EAC/GOV
02/06/2007 03:53 PM

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

cc

bcc

Subject Questions for Eagleton

Commissioners,

Commissioner Davidson asked that I forward to each of you the following questions that I drafted at her request last week. She also asked that I let you know that she is interested in asking questions 3, 5, and 7.

1. What is meant by "statistically significant"? Please explain in plain language when a result is considered statistically significant. Also, please provide an academic definition of that term. How did you calculate the mean and standard deviations from the mean?
2. What data was used to derive these research findings?
3. Did you attempt to find information or data related to elections prior to 2004 in states that have voter identification requirements?
4. What other variables other than voter identification were tested? Contested race? Historical voter turnout? Weather? Media attention to the area? Candidate activities/campaign?
5. What was the impact (positive or negative) of these other factors on voter turnout?
6. How did you control these variables/factors when measuring the impact of voter ID on voter turnout or on prospective voter turnout? For example, did you only apply the factor to like circumstances – similar historical turnout, same level of contention in the races of the ballot, etc.
7. Would the study and your conclusions have been more reliable if additional data had been analyzed? Data such as voter turn out in states that have had voter ID in past Federal elections?
8. What data did you use to identify voter turnout?
9. What data did you use to identify whether people or groups of people were more or less likely to vote when identification is required?
10. Why did you use census data as opposed to data on registered voters? Doesn't census data also include information from people who are not registered voters and people who are not even eligible to be registered voters?

In addition to the questions above, I provided the following feedback to Commissioner Davidson concerning the draft report provided by Eagleton:

- I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the statistician actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomaly for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.
- My second concern is how they (statistically speaking) differentiate between a minimum requirement

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(i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

- My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Commissioner Davidson also asked that I ask some questions related to the first bullet, above, specifically relating to the comparison of states without validation that the state's turn out for 2004 was "normal" for that state as opposed to an anomaly.

Last, Commissioner Davidson asked that you all coordinate your selected questions to avoid having two commissioners wanting to ask the same question.

Please let me know if you have any questions or concerns about these questions or if I can explain my reasoning behind the questions.

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

006748

**Deliberative Process
Privilege**

Juliet E. Hodgkins/EAC/GOV
02/01/2007 03:29 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Karen
Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject More thoughts on Eagleton draft report

After having read the Eagleton draft report, I have some thoughts and questions:

I am troubled by the concept that Eagleton compared states as if they were equal. They assume that, all factors being equal, that the voter turn out in each state would be equal. I am not at all certain that this is the case. Further, there is no evidence that the staticians actually compared previous years' turnout in the same state to determine whether 2004 was some sort of anomaly for that state (high or low). Long story short, I am very skeptical of the data that they used to draw conclusions. We should ask questions about what data they used, how they parsed it, why they used the data, what other data could have been used to provide better, more reliable results.

My second concern is how they (statistically speaking) differentiate between a minimum requirement (i.e. state name, photo i.d., etc) and a maximum requirement (i.e., state name, photo i.d., etc.). It makes no sense to me how they could possibly arrive at a different percentage for these requirement levels.

My third issue is the persistent use of the phrases "ballot access" and "ballot integrity" without some definition or some explanation of what those concepts are.

Juliet Thompson Hodgkins
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United States Election Assistance Commission
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Washington, DC 20005
(202) 566-3100

006747

**Deliberative Process
Privilege**

Juliet E. Hodgkins/EAC/GOV
01/30/2007 09:48 PM

To "Davidson, Donetta" <ddavidson@eac.gov>
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Questions for the public meeting

Donetta,

Below are some questions that I have compiled in reading through the summary that Karen developed. I have not re-evaluated the draft report provided by Eagleton. As soon as I have the opportunity to revisit that document, I will send any additional questions that I would suggest asking.

QUESTIONS FOR EAGLETON:

1. What is meant by "statistically significant"? Please explain in plain language when a result is considered statistically significant. Also, please provide an academic definition of that term. How did you calculate the mean and standard deviations from the mean?
2. What data was used to derive these research findings?
3. Did you attempt to find information or data related to elections prior to 2004 in states that have voter identification requirements?
4. What other variables other than voter identification were tested? Contested race? Historical voter turnout? Weather? Media attention to the area? Candidate activities/campaign?
5. What was the impact (positive or negative) of these other factors on voter turnout?
6. How did you control these variables/factors when measuring the impact of voter ID on voter turnout or on prospective voter turnout? For example, did you only apply the factor to like circumstances – similar historical turnout, same level of contention in the races of the ballot, etc.
7. Would the study and your conclusions have been more reliable if additional data had been analyzed? Data such as voter turn out in states that have had voter ID in past Federal elections?
8. What data did you use to identify voter turnout?
9. What data did you use to identify whether people or groups of people were more or less likely to vote when identification is required?
Why did you use census data as opposed to data on registered voters? Doesn't census data also include information from people who are not registered voters and people who are not even eligible to be registered voters?

Juliet Thompson Hodgkins
General Counsel
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1225 New York Ave., NW, Ste 1100
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006748

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

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

Subject Fw: Draft response to Tova Wang

commisisoners,

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

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

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/11/2006 11:37 AM —



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

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

Subject Re: Draft response to Tova Wang 

Julie and Jeannie:

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

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?



Tova Wang, Dec06.doc

Gracia M. Hillman
Commissioner
U.S. Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005
Tel: 202-566-3100
Fax: 202-566-1392
www.eac.gov

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attachments, if any, are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this message is strictly prohibited. If you received this message in error, please notify the sender immediately by replying to this email and delete this message from your computer.

006750

December 8, 2006

Ms. Tova Wang
(Address)
(Address)

Dear Ms. Wang:

~~The U.S. Election Assistance Commission believes that voting fraud and voter intimidation are very important, complex topics that should be studied and reported on fairly and accurately. As a clearinghouse of election administration information, EAC is committed to providing complete and comprehensive information to the election community and the public.~~

We are writing in response to your December 7, 2006 memorandum.

In its December 2006 report on voting fraud and voter intimidation, As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains~~EAC honored this commitment by providing the readers of its report with the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. It is incumbent upon us to provide them with the best and most complete data and research that we can. Rather than provide only the synopsis of these interviews, EAC provided the readers with the individual -entire- summaries created by the consultants so readers could reach their own conclusions about the substance of the interviews.~~

~~With regard to the interviews of two of the personnel from the Department of Justice, EAC made clarifying edits. Upon reviewing initial information about their Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided by the consultants at the -working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.~~

~~Because of the lack of organization and cohesion in the draft provided by the consultants, that document would have led to greater confusion and division regarding the issues of voting fraud and voter intimidation. As such, EAC revised the draft report and provided the entirety of the supporting documentation to the public.~~

006751

~~For these reasons, t~~The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

006752

**Deliberative Process
Privilege**

Juliet E. Hodgkins/EAC/GOV
11/17/2006 01:40 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R. cc Bert A. Benavides/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Eileen L. Colver/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Gavin S.
bcc

Subject Draft Voting Fraud and Voter Intimidation Report

Commissioners and Tom,

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

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

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

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

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

Happy reading and Happy Thanksgiving!



Voter Fraud & Intimidation Report.doc

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United States Election Assistance Commission
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EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY**INTRODUCTION**

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,¹ who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

¹ Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the
Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of
the Secretary of State
Member, EAC Standards Board

J.R. Perez
Guadalupe County Elections
Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee
for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to National Republican
Campaign Committees and Republican
candidates

Robert Bauer
Chair of the Political Law Practice at the
law firm of Perkins Coie, District of
Columbia
National Counsel for Voter Protection,
Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St
Louis, Missouri
National Counsel to the American
Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief,
Voting Section, Civil Rights Division,
U.S. Department of Justice

Technical Advisor:

Craig Donsanto
Director, Election Crimes Branch, U.S.
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.
- Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.
- American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.
- The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001
- The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.
- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan
Center

William Groth
Attorney for the plaintiffs in the Indiana
voter identification litigation

Lori Minnite
Barnard College, Columbia University

Neil Bradley
ACLU Voting Rights Project

Pat Rogers
Attorney, New Mexico

Nina Perales
Counsel,
Mexican American Legal Defense and
Education Fund

Rebecca Vigil-Giron
Secretary of State, New Mexico

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Stephen Ansolobhere
Massachusetts Institute of Technology

Chandler Davidson
Rice University

Tracey Campbell

Author, *Deliver the Vote*

Douglas Webber

Assistant Attorney General, Indiana

Heather Dawn Thompson

Director of Government Relations,
National Congress of American Indians

Jason Torchinsky

Assistant General Counsel,
American Center for Voting Rights

Robin DeJarnette

Executive Director,
American Center for Voting Rights

Harry Van Sickle

Commissioner of Elections,
Pennsylvania

Tony Sirvello

Executive Director
International Association of Clerks,
Recorders, Election Officials and
Treasurers

Joseph Sandler

Counsel
Democratic National Committee

John Ravitz

Executive Director
New York City Board of Elections

Sharon Priest

Former Secretary of State, Arkansas

Kevin Kennedy

Executive Director
State Board of Elections, Wisconsin

Evelyn Stratton

Justice
Supreme Court of Ohio

Joseph Rich

Former Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Craig Donsanto

Director, Public Integrity Section
U.S. Department of Justice

John Tanner

Director
Voting Section, Civil Rights Division
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to