

Karen Lynn-Dyson/EAC/GOV  
04/28/2006 12:44 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc [REDACTED]  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject Re: Voter ID Paper --Final Draft

History: This message has been forwarded.

Tim, Tom, John, et.al--

The EAC has identified three academics who are going to serve as peer reviewers of the Eagleton Voter ID paper and research.

They are Jonathan Nagler of New York University, Jan Leighley, University of Arizona, and Adam Berinsky of MIT.

They are ready to review the documents as soon as they are available.

I would like to them one week to review the material and then have a joint conference call on **Thursday, May 11**, in which we would all have an opportunity to discuss the research methodology and statistical analysis, along with general comments and suggestions.

If you are able to get to me the paper and the supporting data analysis, I will distribute to the documents ASAP.

Also let me know, if you would, your availability on May 11 to do this conference all.

I anticipate that it will last approximately 90 minutes.

Regards-

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

011393

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

03/28/2006 10:25 AM

cc

bcc

Subject Fw: Voter ID Paper --Final Draft

Let's discuss once you've had a chance to review. As stated, there are a number of their statistical manipulations which I question.

Karen Lynn-Dyson  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/28/2006 09:20 AM —



"Tom O'Neill"

03/16/2006 09:27 AM

To klynndyson@eac.gov

cc

Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone at 908-794-1030.

Tom O'Neill

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

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

**Sent:** Thursday, March 16, 2006 9:00 AM

**To:** [REDACTED]

**Subject:** Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

011394

Regards-  
K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
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tel:202-566-3123 Vercellotti314.doc

011395

Analysis of Effects of Voter Identification Requirements on Turnout  
Tim Vercellotti  
Eagleton Institute of Politics  
Rutgers University

## Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, ~~such as a driver's license~~. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

## Types of voter identification requirements

Each state is classified as having one of five types of identification~~ID~~ requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>1</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a

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<sup>1</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

#### Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ( $r = -.21$ ,  $p < .0001$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ( $r = -.16$ ,  $p < .0001$ ). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.<sup>2</sup> Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I

<sup>2</sup> Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>3</sup> The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.<sup>4</sup> Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ( $p = 0.0003$ ).

Comment [01]

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

<sup>3</sup> The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

<sup>4</sup> The interactions are labeled in Tables 2 and 3 as VID\*African-American, VID\*Hispanic, and VID\*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

[Table 3 here]

The effects of the minimum requirements are not statistically significant ( $p = 0.15$ ). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference ( $p = 0.08$ ), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

#### Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>5</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not

<sup>5</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

~~In addition, I eliminated from the sample respondents who said they were not U.S. citizens.~~

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>6</sup> In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and

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<sup>6</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

## Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. ~~Voter identification requirements exert a statistically significant negative effect on whether survey respondents said they had voted in 2004.~~ Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>7</sup> I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent ~~0.912~~ if all voters had to state their names ~~for stating one's name~~ to 88.7 percent ~~0.887~~ if all voters had to

<sup>7</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

provide for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of 0.25, or 2.5 percent, across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.<sup>8</sup> If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent, respectively, in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if when the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Comment [62]: The turnout figures shown in the analysis of the aggregate data range of 57.1% turnout to 63.1% turnout. When using the individual data based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

<sup>8</sup> See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.<sup>9</sup>

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category—voters with some college education).

### Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey

<sup>9</sup> I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

respondents living in poor households would be 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to say they voted if the maximum requirement is photo identification as opposed to stating one's name as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?<sup>10</sup> Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers, election judges to handle questions about, and potential disputes over, voter identification requirements.

<sup>10</sup> The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

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<b>Maximum Requirement</b>		<b>Minimum Requirement</b>	
<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>	<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>
<b>State Name</b>	63.1 %	<b>State Name</b>	61.3 %
<b>Sign Name</b>	58.6 %	<b>Sign Name</b>	60.4 %
<b>Match Signature</b>	62.1 %	<b>Match Signature</b>	59.2 %
<b>Provide Non-Photo ID</b>	57.8 %	<b>Provide Non-Photo ID</b>	57.6 %
<b>Provide Photo ID</b>	57.3 %	<b>Swear Affidavit</b>	58.7 %
<b>Average Turnout for All States</b>	59.6 %		

**Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

**Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

011409

<b>Variable</b>	<b>Maximum requirements</b>		<b>Minimum requirements</b>	
	<b>Unstandardized Estimate</b>	<b>Standard Error</b>	<b>Unstandardized Estimate</b>	<b>Standard error</b>
<b>Voter ID requirements</b>	-0.04*	0.01	-0.05**	0.01
<b>Hispanic</b>	-0.06	0.05	-0.05	0.05
<b>Black</b>	0.22**	0.04	0.22**	0.04
<b>Other race</b>	-0.23**	0.04	-0.23**	0.04
<b>Age in years</b>	0.01**	0.001	0.01**	0.001
<b>Education</b>	0.12**	0.005	0.11**	0.005
<b>Household income</b>	0.03**	0.003	0.03**	0.003
<b>Married</b>	0.20**	0.02	0.20**	0.02
<b>Female</b>	0.09**	0.01	0.09**	0.01
<b>Battleground state</b>	0.18**	0.04	0.19**	0.04
<b>Competitive race</b>	0.05	0.05	0.05	0.05
<b>Employed</b>	0.05	0.04	0.05	0.04
<b>Member of workforce</b>	-0.04	0.05	-0.04	0.05
<b>Native-born citizen</b>	0.03	0.04	0.04	0.05
<b>Moved within past 6 months</b>	-0.27**	0.03	-0.27**	0.03
<b>Constant</b>	-4.48**	0.20	-4.46**	0.20
<b>Pseudo-R-Squared</b>	0.09		0.09	

Notes:

N = 54,973 registered voters

$p < .05^{**}$   $p < .01^{**}$  (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

<b>Table 5. Predicted probability of voter turnout – full model</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.912	0.911
<b>Sign name</b>	0.906	0.903
<b>Match signature</b>	0.900	0.895
<b>Non-photo ID</b>	0.894	0.887
<b>Photo ID</b>	0.887	----
<b>Affidavit</b>	----	0.878
<b>Total difference from lowest to highest</b>	0.025	0.033
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

**Table 6. Predicted probability of voter turnout – White and Hispanic voters**

	White voters		Hispanic voters
	Maximum requirement	Minimum requirement	Minimum requirement
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups						
	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.759	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference – lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>						

**Comment:** (b) Can you add something to this table to help explain why the difference between the minimum and maximum figures derived from the CPS respondents' responses and official measures of turnout which tend to be in the 10% to 15% range?

**Table 8. Predicted probability of voter turnout – Voters above and below the poverty line**

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement
<b>State name</b>	0.920	0.922	0.784
<b>Sign name</b>	0.915	0.915	0.772
<b>Match signature</b>	0.909	0.907	0.758
<b>Non-photo ID</b>	0.903	0.899	0.745
<b>Photo ID</b>	0.897	----	----
<b>Affidavit</b>	----	0.891	0.731
<b>Total difference from lowest to highest</b>	0.023	0.031	0.053
<b>N</b>	49,935		5,038
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>			

**Table 9. Predicted probability of voter turnout – By education**

	<b>Less than high school</b>		<b>High school</b>		<b>College</b>		<b>Graduate school</b>	
	<b>Maximum requirement</b>	<b>Minimum requirement</b>	<b>Maximum requirement</b>	<b>Minimum requirement</b>	<b>Maximum requirement</b>	<b>Minimum requirement</b>	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
<b>Sign name</b>	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
<b>Match signature</b>	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
<b>Non-photo ID</b>	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
<b>Photo ID</b>	0.708	----	0.833	----	0.939	----	0.957	----
<b>Affidavit</b>	-----	0.705	----	0.824	----	0.940	-----	0.950
<b>Total difference -- lowest to highest</b>	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
<b>N</b>	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

011415



Gracia Hillman/EAC/GOV  
10/23/2006 09:13 PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, "Donetta Davidson" <Ddavidson@eac.gov>  
cc Juliet E. Thompson/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>

bcc

Subject The Fraud "Report"

I am recommending that we use Thursday's meeting, a public forum, to be on the record about this report.

My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

Please let me know what you think about this suggestion. Thanks.

-----  
Sent from my BlackBerry Wireless Handheld

011416



"Tom O'Neill"  
[Redacted]  
07/26/2005 07:44 PM

To "Kristin Smith" [Redacted]  
jthompson@eac.gov  
cc  
bcc  
Subject O'Neill Powerpoint for EAC

Kristin and Julie,

Attached is the Power Point I will use at Thursday's meeting. Thanks for you assistance in making arrangement to distribute and project the presentation.

Tom O'Neill

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

**From:** Kristin Smith [Redacted]  
**Sent:** Tuesday, July 26, 2005 12:12 PM  
**To:** [Redacted]  
**Subject:** Powerpoint for EAC

Mr. O'Neill,

When you have the final version of the powerpoint presentation you are giving, could you please email it also to [Redacted] We will like to distribute it to the Commissioners.

Thank you,

Kristin Smith



Briefinfg72805.ppt

011417

**Briefing for**

**July 28, 2005**

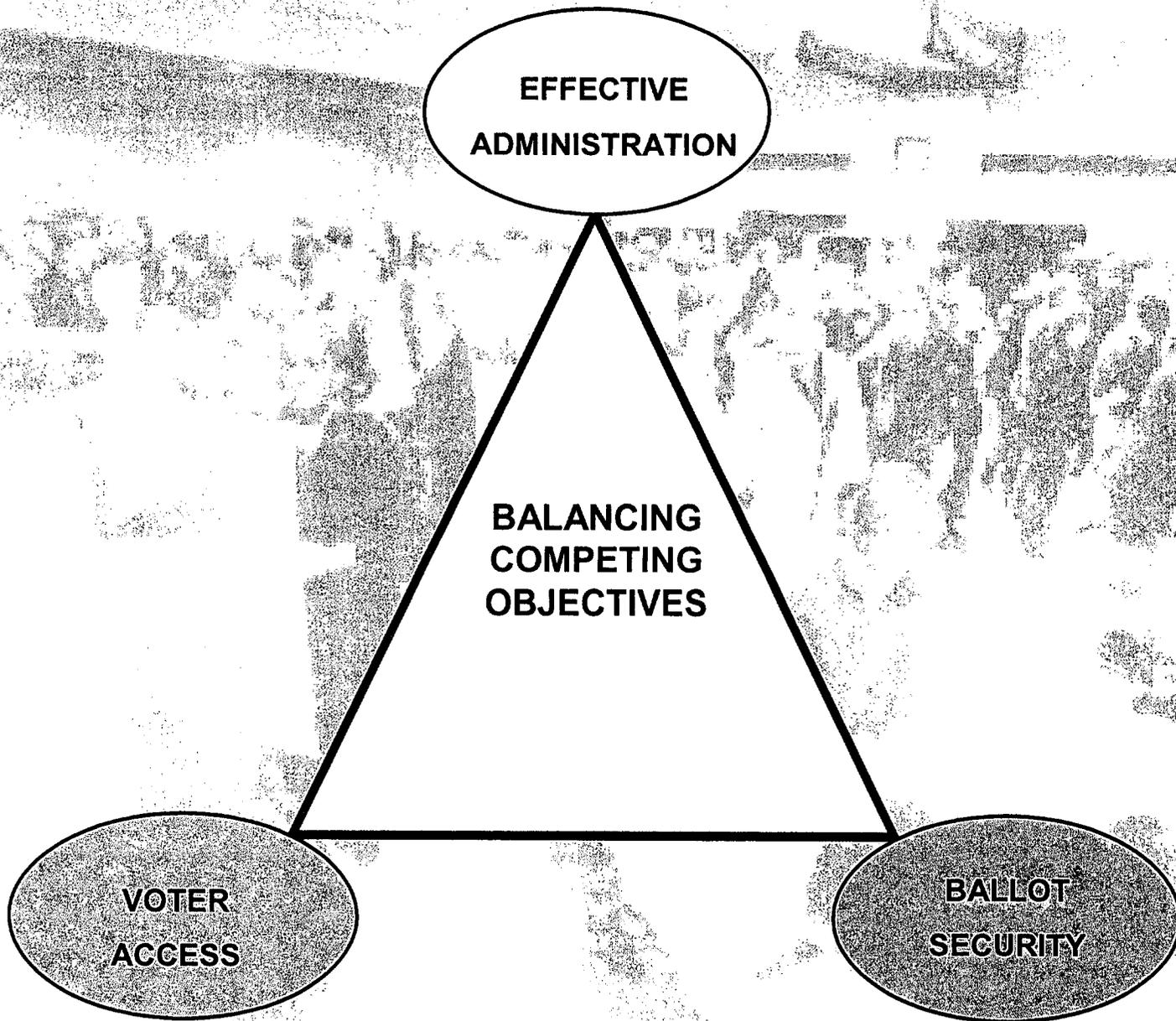
011418

VIS PHAI YOUNG

PHOTOGRAPHY



011419



# Key Questions

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?

**Review of statutes and regulations**

**State narratives**

2. How did this vary between states that had previously had some form of provisional ballot and those that did not?

**Survey of local election officials**

**State narratives**

3. How did litigation affect implementation?

**Survey of case law and regulations**  
**State narratives**

4. How effective was provisional voting in enfranchising qualified voters?

**Survey of litigation**  
**State narratives**  
**Survey of local election officials**

5. Did states and local processes provide for consistent counting of provisional ballots?

**State narratives**

**Survey of litigation**

**Survey of local election officials**

6. Did local election officials have a clear understanding of how to implement provisional voting?

**Survey of local election officials**

**State narratives**

## **OUTREACH**

**American Enterprise Institute**

**Brennan Center for Justice at NYU School of Law**

**Center for Digital Government**

**The Century Foundation**

**The Constitution Project**

**DEMOS-USA**

**The Election Center**

**Election Reform Information Project**

**Leadership Conference on Civil Rights**

**League of Women Voters**

**National Association of Secretaries of State National Association  
of State Election Directors**

**People for the American Way**

**+ Other organizations after consultation with U.S.E.A.C.**

# **PROVISIONAL VOTING**

## **Key Research Deliverables**

- 1. Summary of case law on Provisional Voting**
- 2. Compendium of states' legislation, regulations, and litigation.**
- 3. Analysis of how provisional voting was implemented around the country, which will be critiqued by Peer Review Group.**
- 4. Description of alternatives to existing practices and procedures**

# **VOTER IDENTIFICATION**

## **Key Research Deliverables**

- 1. Indexed database of major articles on Voter ID Requirements**
- 2. Summary of case law**
- 3. Compendium of states' legislation, procedures, and litigation.**
- 4. Analysis of voter participation and vote fraud under various Voter ID regimes to be reviewed by Peer Review Group.**
- 5. Alternative approaches**

## **Hearings on Guidance Documents**

**Consult with EAC to identify locations and venues**

**Hearings to take place 30 days after publication**

**Deliverables**

**Transcript**

**Summary and analysis of comments**

**Recommend revisions to GD based on hearing results and discuss with EAC**

**Deliver final Guidance Document to EAC**

# Project Status

## PROVISIONAL VOTING

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

---

- Initial legal, regulatory, and case law research for 44 states, is complete. Completion for all states by August 1.
- Compiling narrative description of experience in each state. Completion in first week in August.
- Surveying 400 county election officials actual practice in administering provisional voting. Completion mid-August.

# Project Status

## VOTER IDENTIFICATION

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

- Initial research complete (and statutes compiled) for 45 states. Questions answered include *"Who is required to present ID"*, *"Types of ID required"*, and *"Consequences of having no ID"*. Complete mid-September.
- Collecting information on the voter id debate in the states to monitor possible secondary effects of HAVA and to suggest alternative approaches. Complete first week of August.
- Statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters. Complete late August.

**Briefing for**

**July 28, 2005**



"Tom O'Neill"

07/26/2005 10:39 AM

To jthompson@eac.gov

cc

bcc

Subject: Pasadena Meeting

History:

 This message has been replied to.

Julie: My plane arrives at LAX at about 5, and I should arrive in Pasadena after 7. I don't think we could meet until about 8 p.m. Does that fit your plans? I am staying at the Huntington, about a mile from the Cal Tech campus. You can always reach me by cell phone at 908-794-1030.

Dan and I have divided up our presentation this way: I will describe the overall research effort and the major questions to which we are seeking answers. I'll also outline the methods we are using to develop those answers and report on the current status of the work. Dan will describe in greater detail Moritz's research and compilation of the statutes, regulation and case law and describe some of the key matters of substance involved in developing our report.

The outline of my talk on Power Point is not yet complete, but the unfinished version is attached to give you a clearer impression of the presentation. I assume the meeting room will have a projector and screen. If that is not the case let me know and I'll print the Power Point slides and hand them out to the Commissioners.

Tom O'Neill

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

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

**Sent:** Tuesday, July 26, 2005 8:51 AM

**To:** [REDACTED]

**Subject:** Progress Report

Tom,

I'm so sorry for taking so long to get back to you. I am hoping that you have moved forward with your update presentation. My general thoughts are very simple, just a presentation on the research that you have done thus far, the plans that you have made for additional research, but not to include any preliminary conclusions at this point.

Is there a possibility that I could get a copy of what you guys are thinking of presenting prior to the meeting? I am sure that the Commissioners will want it in advance to prepare questions for you and Dan.

011431

Also, you and I had planned to get together on Wednesday. What time are you arriving? I plan to go over to the university and view the room just after I arrive (around 1:00). Would you have some time around 3:30 or 4:00?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Briefing72805.ppt

011432



"Tom O'Neill"  
[Redacted]  
07/20/2005 02:45 PM

To jthompson@eac.gov  
cc  
bcc

Subject July 28 Meeting

History: This message has been replied to

Julie:

I reached Dan Tokaji of Moritz, and he is happy to join me in making a presentation at the Pasadena meeting. As you develop further thoughts on what you would like us to cover, we'd be delighted to hear them.

Tom O'Neill



"Tom O'Neill"  
[Redacted]  
07/15/2005 10:01 AM

To jthompson@eac.gov  
cc klyndyson@eac.gov  
bcc

Subject July 28 hearing

History:  This message has been replied to.

Julie:

Can you fill me in on the current status of your planning for the hearing in Pasadena. Have invitations gone out to panelists? Are there tasks you would like us to undertake in preparation for the meeting?

Thanks,

Tom O'Neill



"Tom O'Neill"

07/11/2005 11:53 AM

To jthompson@eac.gov

cc

bcc

Subject RE: Status of agenda recommendations

Julie: The great strength that Doug Chapin would bring (as opposed to a historian) is that he could put the presentations from Mississippi and Wisconsin in national perspective. The debate over voter id, as you know, is taking place across the country. The terms of the debate everywhere are strikingly similar: voter access versus ballot security. Chapin could provide the context that would make it possible for the commissioners to appreciate the presentations of the two legislators as examples of a broader, national debate

A historian, as opposed to Chapin would provide a different sort of context. The historian would describe as a step in the evolution of the franchise.

The panel would be stronger if the two legislators' stories were put in context. The 10 – 15 minutes spent on context, whether current or historical, would, I think, be well worth it.

Tom

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

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

**Sent:** Monday, July 11, 2005 9:24 AM

**To:** [REDACTED]

**Subject:** Re: Status of agenda recommendations

Tom,

What are your thoughts about just having the legislators and not the historian. I am just thinking time-wise, we may be a bit tight. Do you think we can get the same sense of how these debates have come up and been resolved through the legislators?

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

011435

"Tom O'Neill" <[REDACTED]>

07/08/2005 02:52 PM

Tojthompson@eac.gov

cc

SubjectRe: Status of agenda recommendations

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

Three possibilities are:

Dayna L. Cunningham, author of "*Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*," 9 Yale L. & Pol'y Rev. 370 (1991). She was Assistant Counsel in the Voting Rights Project of the NAACP Legal Defense and Educational Fund at the time she wrote the article. She was active as a pro bono lawyer on election issues in Florida in 2004, and is now with Lord-Ross Philanthropic Advisors in Boston. [dcunningham@lordross.org](mailto:dcunningham@lordross.org) (914) 907-8895

R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the United States." Currently at the Kennedy School of Government, but on leave. [http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)

Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

011436



"Tom O'Neill"  
[REDACTED]  
07/08/2005 02:52 PM

To jthompson@eac.gov  
cc  
bcc  
Subject Re: Status of agenda recommendations

History

✉ This message has been replied to

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

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R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the United States." Currently at the Kennedy School of Government, but on leave.

[http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)

Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

011437



"Tom O'Neill"  
[Redacted]  
07/06/2005 04:51 PM

To jthompson@eac.gov  
cc  
bcc

Subject Re: Status of agenda recommendations

History

✉ This message has been replied to and forwarded.

Julie:

We agree with your conception of the hearing as including 3 panels.

Panel 1 on the History of Voter ID and Experiences Adopting Voter ID Requirements.

We are looking for a scholar in this area as an alternative to Doug Chapin to speak to the historical perspective. The other panelists should represent Mississippi and Wisconsin, a pro voter ID speaker from one state and an opponent from the other. The choices, more detail on them is contained in my earlier memo on this topic, are:

Mississippi: Rep William Denny (pro) or Rep. Walter Robinson (con)  
Wisconsin: Sen. Joe Leibhan (pro) or Sen. Judith Robinson (con)

Panel 2 on Voter ID and HAVA.

Your suggestions ere (Andino of SC and Thompson of TN) look fine.

Panel 3 on Voter ID, Turnout and HACA

Minnite of Barnard and Samples of Cato.

On the subject of this hearing: in view of the change from Minneapolis to Pasadena, we would like to know if the commitment to the date and place is now certain enough that we should buy plane tickets. Affecting the travel decision will be the availability of a webcast of the event. Do you plan to offer that, as you did at the Columbus hearing?

Tom

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

**From:** [jthompson@eac.gov](mailto:jthompson@eac.gov)  
[Redacted]

**Sent:** Wednesday, July 06, 2005 4:00 PM

**Subject:** Status of agenda recommendations

tom,

We are looking at the question that you posed on provisional voting states. That should be completed soon.

How are we coming on the recommendations for the July 28 meeting? I will need to get the commissioners to approve and get the invitations issued as soon as possible.

Juliet E. Thompson

011433

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



"Tom O'Neill"  
[REDACTED]  
07/01/2005 02:00 PM

To jthompson@eac.gov  
cc  
bcc

Subject Provisional Voting in the states

History:  This message has been replied to and forwarded.

Julie: Nice to see you in New York yesterday. Here is the list of states categorized by whether provisional voting was new to them post HAVA or whether they had had some form of provisional ballot pre-HAVA. As we discussed, this list will be used in sampling and analyzing the survey of local election officials is that is about to begin. The EAC's review of the list would be helpful in ensuring that we have assigned states to the correct category.

Have a good 4th.

Tom

OLD PROVISIONAL VOTING STATES (27)

AK, AZ, AR, CA, DC, FL, IA, KS, MD, NM, NY, NC, OR, RI, SC,  
VA, WA, WV, CO, NE, NJ, OH, AL, KY, MI, MS, TX

NEW PROVISIONAL VOTING STATES (17)

CT, DE, GA, HI, IL, IN, LA, MA, MO, MT, NV, OK, PA, SD, TN, UT, VT

-----



"Tom O'Neill"  
[REDACTED]  
06/29/2005 11:14 AM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: July Meeting - California

Julie,

I'll study your suggested revisions to the panels with and discuss them with my colleagues.

The last I heard the date and place for the hearing was July 26 in Minneapolis? Is it now scheduled for July 28 in California?

Tom

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

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

**Sent:** Wednesday, June 29, 2005 10:40 AM  
[REDACTED]

**Subject:** July Meeting - California

I have reviewed the agenda that your group proposed with regard to the meeting on Voter ID. The attached are some suggestions on a few changes. We have had Chris Thomas and Secretary Cortes speak at recent meetings of EAC. So, I have included a few other ideas of states that have and those that do have ID requirements. Please take a look at this. Perhaps we can chat about it on Tuesday, July 5.

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

011441



"Tom O'Neill"  
[REDACTED]

06/08/2005 05:10 PM

To jthompson@eac.gov

cc

bcc

Subject June 30 Panel

Julie:

I am leaving my computer now to drive to a dinner meeting. If you have questions, concerns, or comments about the recommendation please call me on my cell phone (908) 794-1030. I'll check e mail next around 11 p.m.

Tom

011442



"Tom O'Neill"

06/08/2005 04:44 PM

To jthompson@eac.gov

cc

bcc

Subject June 30 Panel --comment OSU

Julie:

I have now heard from Ned Foley at OSU. He makes a useful observation and suggestion.

Ned cautions that there just might be residual animosity between the two Mississippi legislators that would become apparent at the hearing. (I have not talked to any of the panelists recommended, but by Mississippi informant, a legislative staffer, said that the debate while emotional cleared the air and left everyone feeling better.)

Ned suggests that since Wisconsin Indiana, Arizona and New Mexico have experienced much the same debate, the panel could be structured to include a "pro" view from one state, say Mississippi, and the "con" view from another one of the other four. I can't offer you a specific legislator from one of those other states at this minute, but if you elect to take that approach, finding one should not be difficult.

Tom

011443

Julie:

I should have a recommendation to you for the panels on Wednesday. Your recommendation of John Samples strikes me as very well chosen. He has opined on the topic of voter id and turnout for USA today --and he has a PhD from Rutgers.

Just to provide a preview of what I think our recommendation will be, I now envision two panels. The first would look at Voter ID requirements within the 4 corners of HAVA through presentations by election directors from two contrasting states (probably Michigan and Pennsylvania), perhaps supplemented by an analyst who can put the stories of these two states in a broader context.

The second panel would broaden the scope to include voter id issues that go beyond first-time mail registrants. This second panel would explore the debate between those who argue for tighter ID requirements to prevent fraud and those who caution that tighter requirements will depress turnout, especially among older voters, African Americans and immigrants. This panel could be composed of two Mississippi legislators (not the two we discussed a few days ago) and two analysts, possibly Samples and Lorraine Minnite, the Barnard political scientist who was the lead researcher on the Demos election fraud study (and who has a professional interest in immigrant voting patterns}.

The Eagleton team is meeting on this, among other topics, tomorrow morning. I'll then consult with our Moritz colleagues and make a few phone calls to identify the best candidates from Mississippi and put together a recommendation for you.

Your reaction to this plan as it takes shape would be welcome.

Tom



JUNE 30 HEARING RECOMMENDATIONS.doc

011445



"Tom O'Neill"  
[Redacted]  
06/06/2005 07:47 PM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: Mississippi Legislators

History This message has been replied to.

Julie:

I should have a recommendation to you for the panels on Wednesday. Your recommendation of John Samples strikes me as very well chosen. He has opined on the topic of voter id and turnout for USA today --and he has a PhD from Rutgers.

Just to provide a preview of what I think our recommendation will be, I now envision two panels. The first would look at Voter ID requirements within the 4 corners of HAVA through presentations by election directors from two contrasting states (probably Michigan and Pennsylvania), perhaps supplemented by an analyst who can put the stories of these two states in a broader context.

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The Eagleton team is meeting on this, among other topics, tomorrow morning. I'll then consult with our Moritz colleagues and make a few phone calls to identify the best candidates from Mississippi and put together a recommendation for you.

Your reaction to this plan as it takes shape would be welcome.

Tom

011446



"Tom O'Neill"  
[REDACTED]  
06/06/2005 11:58 AM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: Mississippi Legislators

History: This message has been replied to

Thank you, Julie.

Tom

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

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Monday, June 06, 2005 11:16 AM  
**To:** [REDACTED]  
**Subject:** RE: Mississippi Legislators

Some thoughts on a speaker (conservative) from the academic sector

Cameron Quinn - IFES - she was with the Commonwealth of Virginia as the State Board of Elections Director before going to IFES and has been appointed as an academic advisor to the Carter-Baker Commission

John Samples - Cato Institute - also an academic advisor to the Carter-Baker Commission

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

"Tom O'Neill"  
[REDACTED]

06/03/2005 08:49 AM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

011447

Thanks, Julie.

Tom

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

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

**Sent:** Friday, June 03, 2005 8:32 AM

**To:** tom, [REDACTED]

**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

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

011448



"Tom O'Neill"  
[Redacted]  
06/03/2005 08:49 AM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: Mississippi Legislators

History: This message has been replied to

Thanks, Julie.

Tom

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

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Friday, June 03, 2005 8:32 AM  
**To:** [Redacted]  
**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

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

011449



"Tom O'Neill"

06/02/2005 05:58 PM

To jthompson@eac.gov

cc

bcc

Subject Mississippi Legislators

History:

 This message has been replied to.

Julie:

I neglected to attach the promised article about the 2 Mississippi legislators. Here it is.

Tom



Voter ID exposes raw emotions in House.doc

011450

Voter ID exposes raw emotions in House  
Lawmakers represent two Mississippis  
By: Emily Wagster Pettus, Associated Press 03/23/2004

JACKSON - Reps. Erik Fleming and Philip Gunn both live in Clinton and are close to the same age. Their state House districts twist and weave around one another in the metro Jackson suburbs.

But in some ways, the two state lawmakers represent two different Mississippis.

Fleming, 39, is a black Democrat. Gunn, 41, is a white Republican.

The day after an emotionally wrenching House debate over voter ID, Fleming and Gunn stayed at the Capitol to quietly discuss one of Mississippi's most racially divisive political issues: Should people be required to prove their identity at the polls?

Like many white legislators, Gunn supports voter identification. He says requiring a driver's license or other ID would prevent people from voting in others' names.

"It is not a racial issue for the younger members - the younger white members. There are legitimate problems with our process, and voter ID is one way to fix them," said Gunn, who was elected last year only after some precincts were revoted in a disputed Republican primary.

Like most black lawmakers, Fleming opposes voter ID. He points to Mississippi's history of racial strife designed to keep blacks from voting - from poll taxes to shootings.

"From the black perspective, it's all about inclusion. From the white perspective, it's all about fairness," Fleming said.

Last Thursday, a House debate on an affidavit-voting bill stretched more than three hours after Republican lawmakers offered voter ID amendments.

An amendment by Rep. Bill Denny, R-Jackson, would have required a voter to show anything from a driver's license to a pilot's license before casting an affidavit ballot. It was adopted 77-45, with solid opposition from blacks and a few whites and support from white Republicans and many white Democrats, including Speaker Billy McCoy.

That prompted speeches from more than three dozen of the 122 House members, for and against ID.

Several black lawmakers, including Rep. Tyrone Ellis, D-Starkville, told personal stories of being threatened for trying to exercise their constitutional rights.

"You get shot at, you get burned out, then someone puts this before you and you tell me

how you vote," Ellis said, his voice rising.

The Mississippi House is generally divided into three factions - white Republicans, black Democrats and rural white Democrats. During Thursday's debate, lawmakers say it became clear that the voter ID disagreement threatened the coalition of black and rural white Democrats that had brought McCoy into the speakership in January.

White Democrats who had voted for the ID amendment started going to the podium to urge defeat of the bill. Among them was Rep. Bo Eaton, D-Taylorville.

"I feel it was an issue that was going to divide the House, when we don't even have a balanced budget yet," Eaton said the next day.

Rep. Steve Holland, D-Plantersville, was on the verge of tears as he said he was switching his vote - from supporting ID to opposing passage of the bill.

The bill was defeated 47-72.

On Friday morning after most of their colleagues had left for the weekend, Fleming and Gunn sat on the last row of the House chamber and chatted about ID. They wondered aloud how they could find a solution palatable not only to their constituents but to the diverse state as a whole.

Gunn wondered if the U.S. Justice Department - which oversees changes in Mississippi's voting system to ensure fairness to minorities - would accept a bill requiring ID for younger people but not for older ones who had lived through the turbulent civil rights era.

"We have to respect the feelings of the older members of the Black Caucus," Gunn said. "You can't ask them to forget what they went through. You can't ask them to ignore it."

Fleming said he was encouraged when a white lawmaker walked back to his desk during the debate and said: "I know where you're coming from."

Fleming said he's "very optimistic" that lawmakers eventually will find a solution to address concerns about voting integrity and inclusion. A voter ID bill has passed the Senate and awaits consideration in a House committee - but it's not clear whether that bill will make it to the full House.

Gunn said last week's House debate gave members a chance to express their feelings without accusing each other of being stupid.

Fleming agreed and added: "I think this was a discussion or a come-to-Jesus meeting that was 40 years in the making."

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Erik Fleming (D)

601-366-9954 (o)

601-925-1740 (h)

Philip Gunn ®

601-355-8321 (o)

601-924-8438 (h)



"Tom O'Neill"

06/02/2005 05:30 PM

To jthompson@eac.gov

cc [REDACTED]; "Edward Foley" [REDACTED]

klynndyson@eac.gov

bcc

Subject June 30 Hearing Panelists

Julie:

Thanks for your call. Our conversation helped me crystallize further the recommendations we will make to the Commission about the material to be covered at the hearing.

I believe we will recommend two panels of 3 or 4 people each for the June 30 hearing. One will cover the relatively narrow HAVA Voter ID requirements with presentations by 2 state-level voting administrators with contrasting experiences. The contrast between Michigan and Pennsylvania might prove especially instructive because it would demonstrate the relationship between the quality of the data base and requirements for voter identification. Since the hearing is being held in Manhattan, perhaps inviting a speaker from New York instead of Pennsylvania would make sense. I'd appreciate your thoughts on that.

Two other speakers could address the issue of broader Voter ID requirements to reduce vote fraud by requiring some form of identification for each voter at the polling place. The experience in Mississippi over the past 5 years has been particularly dramatic, as illustrated by the attached news article from the local press last year. As we discussed, inviting the 2 legislators profiled in the article might make for powerful testimony.

The final 2 speakers we believe should be academics who have studied the relationship between Voter ID regimes, voter participation and vote fraud and who have conflicting evidence and conclusions to offer. We have found at least two university based researchers who can present the view that stricter Voter ID requirements do not reduce vote fraud and do dampen participation. We have not yet identified a researcher from the other end of the spectrum, but we are looking actively. Your suggestions would be most welcome.

Below is our current list of possibilities for your review.

Tom

JUNE 30 HEARING  
POSSIBLE PANELISTS OR TOPICS

Possible States to be represented by one or more panelists

**Mississippi**

Debate over voter id issues has been dramatic. The resonance of Mississippi on voting issues would lend

011454

interest to the testimony. Voter id legislation was not approved in the current legislative session and has been a source of contention at least since 1999.

### **Michigan**

Strong database state; lax Voter ID requirements don't seem to present as much of a problem (although one hears rumors about Detroit); interesting contrast to NY. With Pennsylvania would present contrasts in the importance of the Statewide Voter Data Base

### **New York**

Had a significant problem with provisional ballots, suggesting that their relatively lax ID rules might be problematic; also Tom Wilkey will have good contacts there. The hearing is there.

### **Pennsylvania**

Relatively lax ID rules and apparently quite a few problems with provisional ballots in 2004. Had start up problems with its data base and would offer comparisons between counties where the data base was well established and those where is new. Should be weighed against New York for inclusion as a contrast with Michigan

### **Wisconsin**

Governor Doyle vetoed the legislature's first attempt at tightening voter ID requirements, and instead offered a package to recruit and train more qualified poll workers and calls for improvements in voter registration procedures.

### Academics on Voter ID, Turnout, and Vote Fraud

#### **Spencer Overton**

Professor, GWU Law School. Has written op-eds arguing that the empirical research is insufficient to support the need for more ID to reduce fraud. He is working on a book on the topic.

#### **John Fortier**

Research Fellow at the American Enterprise Institute. Recommended by Norm Ornstein. Google revealed no publications on this topic by Fortier.

#### **Lorraine C. Minnite**

Assistant Professor of Political Science, Barnard College. Lead researcher of the Demos election fraud study and researcher in immigrant voting patterns. Found that the incidence of fraud perpetrated by individual voters in the United States was very low and had a minimal impact on election outcomes.

#### **Guy-UrielCharles**

Associate Professor of Law, Center for the Study of Political Psychology University of Minnesota. His areas of interest include Election Law and Election Law Disputes and African American Voting Concerns. He is a member of the National Research Commission on Elections and Voting of the Social Science Research Council



"Tom O'Neill"  
[REDACTED]

06/02/2005 04:28 PM

To jthompson@eac.gov

cc

bcc

Subject RE: Arrangements for June 30 Meeting

Thanks, Julie. Having the physical arrangements for the conference already made by the Commission gives us a leg up. I hope we can talk today about content as well. Your knowledge of what's going on in the states and which analysts have the most to say would be very useful I'll call around 5 and hope to catch you.

Tom O'Neill  
908-794-1030

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

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

**Sent:** Thursday, June 02, 2005 12:27 PM

**To:** [REDACTED]

**Cc:** klynndyson@eac.gov; cpaquette@eac.gov

**Subject:** Re: Arrangements for June 30 Meeting

Tom,

The following answers, I hope, your questions. I am happy to discuss this further.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

EAC has a meeting location for this meeting and the hearing that will follow. The meeting and hearing will be held at the Marriot Marquis Hotel. I will have staff provide the address and room.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

While EAC has not yet made arrangements for a transcriber, we will as we will need one for the meeting and the hearing.

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

Yes, EAC will have staff available for this function.

4. Will the EAC issue the news release about the meeting and the panel?

011456

Yes.

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

Federal travel regulations apply. However, once you have made recommendations on panelists and the Commission has approved those panelists, we will take care of their travel arrangements and accommodations.

Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin.

I can imagine that the Commission will not want to use Arizona. There is a great deal of controversy around some proposed legislation that was introduced and passed by the Arizona legislature last year. EAC has not yet taken a position on that controversy, but may. Until such time as EAC has formalized its opinion on this, EAC will not want to invite a public debate on this issue.

I will call you later to discuss any questions or concerns. I am in a meeting from 1 - 3 (EDT)

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

"Tom O'Neill" 

06/01/2005 10:47 PM

To [jthompson@eac.gov](mailto:jthompson@eac.gov)  
cc [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
Subject Arrangements for June 30 Meeting

Julie,

011457

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

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3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

4. Will the EAC issue the news release about the meeting and the panel?

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can

always reach me-- is [REDACTED]

Tom O'Neill



"Tom O'Neill"

06/01/2005 10:47 PM

To jthompson@eac.gov

cc klyndyson@eac.gov

bcc

Subject Arrangements for June 30 Meeting

History

This message has been replied to.

Julie,

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011460

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I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- is [REDACTED]

Tom O'Neill

Juliet E. Thompson/EAC/GOV  
07/26/2005 12:49 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Pasadena Meeting 

that sounds fine. I do have a dinner engagement that will be earlier that evening. How about calling me when you get in? I can always sit and have a drink while you eat, or whatever works.

Also, thank you for the powerpoint. If you will send me the final via email, I will make sure that it is loaded onto the laptop and ready for your presentation.

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

"Tom O'Neill" <[REDACTED]>



"Tom O'Neill"  
[REDACTED]  
07/26/2005 10:39 AM

To jthompson@eac.gov  
cc  
Subject Pasadena Meeting

Julie: My plane arrives at LAX at about 5, and I should arrive in Pasadena after 7. I don't think we could meet until about 8 p.m. Does that fit your plans? I am staying at the Huntington, about a mile from the Cal Tech campus. You can always reach me by cell phone a [REDACTED]

Dan and I have divided up our presentation this way: I will describe the overall research effort and the major questions to which we are seeking answers. I'll also outline the methods we are using to develop those answers and report on the current status of the work. Dan will describe in greater detail Moritz's research and compilation of the statutes, regulation and case law and describe some of the key matters of substance involved in developing our report.

The outline of my talk on Power Point is not yet complete, but the unfinished version is attached to give you a clearer impression of the presentation. I assume the meeting room will have a projector and screen. If that is not the case let me know and I'll print the Power Point slides and hand them out to the Commissioners.

Tom O'Neill

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

011462

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

**Sent:** Tuesday, July 26, 2005 8:51 AM

**To:** [REDACTED]

**Subject:** Progress Report

Tom,

I'm so sorry for taking so long to get back to you. I am hoping that you have moved forward with your update presentation. My general thoughts are very simple, just a presentation on the research that you have done thus far, the plans that you have made for additional research, but not to include any preliminary conclusions at this point.

Is there a possibility that I could get a copy of what you guys are thinking of presenting prior to the meeting? I am sure that the Commissioners will want it in advance to prepare questions for you and Dan.

Also, you and I had planned to get together on Wednesday. What time are you arriving? I plan to go over to the university and view the room just after I arrive (around 1:00). Would you have some time around 3:30 or 4:00?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Briefing72805.ppt

011463

Juliet E. Thompson/EAC/GOV  
07/20/2005 02:54 PM

To "Tom O'neill" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc

Subject Re: July 28 Meeting

As soon as I have a few minutes to think clearly, I will definitely send you an email on that. Thanks for accommodating our request.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tom O'neill" <[REDACTED]>



"Tom O'neill" <[REDACTED]>  
07/20/2005 02:45 PM

To jthompson@eac.gov  
cc  
Subject July 28 Meeting

Julie:

I reached Dan Tokaji of Moritz, and he is happy to join me in making a presentation at the Pasadena meeting. As you develop further thoughts on what you would like us to cover, we'd be delighted to hear them.

Tom O'Neill

011464

Juliet E. Thompson/EAC/GOV  
07/15/2005 11:24 AM

To "Tom O'neill" [REDACTED]>@GSAEXTERNAL  
cc  
bcc

Subject Re: July 28 hearing 

After much wrangling, the final agenda is attached. We have invited the speakers, but have not heard back from most. We will follow up on Monday.

All of the arrangements have been made. CalTech is letting us use the Baxter Lecture Hall in the Baxter Humanities building. We are still working on webcasting. CalTech cannot or will not host it on their site, but we are trying to get it done through another source.

We have a block of rooms at the Westin. We will likely have some extras if you would like to use them. I will confirm this in the next few days.



draft agenda - July public meeting v 3.doc

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

"Tom O'neill" <[REDACTED]>



"Tom O'neill"

[REDACTED]  
07/15/2005 10:01 AM

To jthompson@eac.gov  
cc klynndyson@eac.gov  
Subject July 28 hearing

Julie:

Can you fill me in on the current status of your planning for the hearing in Pasadena. Have invitations gone out to panelists? Are there tasks you would like us to undertake in preparation for the meeting?

Thanks,

Tom O'Neill

011465



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

Thursday, July 28, 2005  
10:00 AM – 12:00 PM

**Call to Order (Chair Hillman)**

**Pledge of Allegiance (Chair Hillman)**

**Roll Call**

**Adoption of Agenda (Chair Hillman)**

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

**Reports**

- Title II Requirements Payments Update
- Statewide Voter Registration List Guidance

**Presentations**

**The Interaction of Voter Identification with HAVA**

- Marci Andino, Executive Director, State Election Commission, South Carolina – Interaction between Voter ID and Voter Registration Databases
- Brook Thompson, Coordinator of Elections (Tennessee) -- Interaction between voter ID and provisional voting (TN had voter ID prior to HAVA but no provisional voting prior to HAVA)

**Voter ID under HAVA: Was it sufficient?**

- Senator Lawson C. Heinold (R, Indiana – Author of Indiana's Voter ID law)
- Senator Judith Robson (D, Wisconsin – Opposed bill to create voter ID requirement in Wisconsin)
- Lorraine C. Minnite, Assistant Professor, Columbia University
- John Samples, Director, Center for Representative Government, The Cato Institute

**Commissioners' Closing Remarks**

**Adjournment**

Juliet E. Thompson/EAC/GOV  
07/11/2005 11:58 AM

To "Tom O'Neill" [REDACTED]  
cc  
bcc

Subject Re: Status of agenda recommendations

O.k. I will look at the historians. I am leaning away from Doug Chapin. I am trying to finalize this list for final approval by the Commissioners this afternoon. Will be back in touch later today.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Tom O'Neill" [REDACTED]  
**Sent:** 07/11/2005 11:53 AM  
**To:** Juliet Thompson  
**Subject:** RE: Status of agenda recommendations

Julie: The great strength that Doug Chapin would bring (as opposed to a historian) is that he could put the presentations from Mississippi and Wisconsin in national perspective. The debate over voter id, as you know, is taking place across the country. The terms of the debate everywhere are strikingly similar: voter access versus ballot security. Chapin could provide the context that would make it possible for the commissioners to appreciate the presentations of the two legislators as examples of a broader, national debate

A historian, as opposed to Chapin would provide a different sort of context. The historian would describe as a step in the evolution of the franchise.

The panel would be stronger if the two legislators' stories were put in context. The 10 – 15 minutes spent on context, whether current or historical, would, I think, be well worth it.

Tom

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

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Monday, July 11, 2005 9:24 AM  
**To:** [REDACTED]  
**Subject:** Re: Status of agenda recommendations

011467

Tom,

What are your thoughts about just having the legislators and not the historian. I am just thinking time-wise, we may be a bit tight. Do you think we can get the same sense of how these debates have come up and been resolved through the legislators?

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

"Tom O'Neill" <[REDACTED]>

07/08/2005 02:52 PM

To: [Tjthompson@eac.gov](mailto:Tjthompson@eac.gov)  
cc  
Subject: Re: Status of agenda recommendations

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

Three possibilities are:

Dayna L. Cunningham, author of "*Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*," 9 *Yale L. & Pol'y Rev.* 370 (1991). She was Assistant Counsel in the Voting Rights Project of the NAACP Legal Defense

011468

and Educational Fund at the time she wrote the article. She was active as a pro bono lawyer on election issues in Florida in 2004, and is now with Lord-Ross Philanthropic Advisors in Boston. [dcunnigham@lordross.org](mailto:dcunnigham@lordross.org) [REDACTED]

R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the United States." Currently at the Kennedy School of Government, but on leave. [http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)  
Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

Juliet E. Thompson/EAC/GOV  
07/11/2005 09:24 AM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc  
bcc  
Subject Re: Status of agenda recommendations [REDACTED]

Tom,

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(202) 566-3100  
"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
07/08/2005 02:52 PM

To jthompson@eac.gov  
cc  
Subject Re: Status of agenda recommendations

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[REDACTED]

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Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the

011470

United States." Currently at the Kennedy School of Government, but on leave.

[http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)

Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

Juliet E. Thompson/EAC/GOV  
06/29/2005 11:18 AM

To [REDACTED]  
cc  
bcc

Subject Re: July Meeting - California

Yes. Long story short we could not work into the schedule that was already set for the NASS meeting in Minneapolis. We will be at CalTech -- Pasadena, CA

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** "Tom O'Neill" [REDACTED]  
**Sent:** 06/29/2005 11:14 AM  
**To:** Juliet Thompson  
**Subject:** RE: July Meeting - California

Julie,

I'll study your suggested revisions to the panels with and discuss them with my colleagues.

The last I heard the date and place for the hearing was July 26 in Minneapolis? Is it now scheduled for July 28 in California?

Tom

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

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Wednesday, June 29, 2005 10:40 AM  
**To:** [REDACTED]  
**Subject:** July Meeting - California

I have reviewed the agenda that your group proposed with regard to the meeting on Voter ID. The attached are some suggestions on a few changes. We have had Chris Thomas and Secretary Cortes speak at recent meetings of EAC. So, I have included a few other ideas of states that have and those that do have ID requirements. Please take a look at this. Perhaps we can chat about it on Tuesday, July 5.

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

011472

Juliet E. Thompson/EAC/GOV  
06/08/2005 03:34 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Mississippi Legislators [REDACTED]

Just a gentle reminder that I need to get the names of the panelists to be able to present to the commissioners tomorrow morning.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tom O'Neill" <[REDACTED]>



"Tom O'Neill"  
[REDACTED]  
06/06/2005 07:47 PM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

Julie:

I should have a recommendation to you for the panels on Wednesday. Your recommendation of John Samples strikes me as very well chosen. He has opined on the topic of voter id and turnout for USA today --and he has a PhD from Rutgers.

Just to provide a preview of what I think our recommendation will be, I now envision two panels. The first would look at Voter ID requirements within the 4 corners of HAVA through presentations by election directors from two contrasting states (probably Michigan and Pennsylvania), perhaps supplemented by an analyst who can put the stories of these two states in a broader context.

The second panel would broaden the scope to include voter id issues that go beyond first-time mail registrants. This second panel would explore the debate between those who argue for tighter ID requirements to prevent fraud and those who caution that tighter requirements will depress turnout, especially among older voters, African Americans and immigrants. This panel could be composed of two Mississippi legislators (not the two we discussed a few days ago) and two analysts, possibly Samples and Lorraine Minnite, the Barnard political scientist who was the lead researcher on the Demos election fraud study (and who has a professional interest in immigrant voting patterns).

The Eagleton team is meeting on this, among other topics, tomorrow morning. I'll then

011473

consult with our Moritz colleagues and make a few phone calls to identify the best candidates from Mississippi and put together a recommendation for you.

Your reaction to this plan as it takes shape would be welcome.

Tom

Juliet E. Thompson/EAC/GOV  
06/06/2005 05:37 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc  
bcc  
Subject RE: Mississippi Legislators [REDACTED]

Are we ready to submit this proposal to the commissioners, or am I waiting on something from you? If I am waiting, will I be able to have it for Thursday morning?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" [REDACTED]



"Tom O'Neill" [REDACTED]  
06/06/2005 11:58 AM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

Thank you, Julie.

Tom

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

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Monday, June 06, 2005 11:16 AM  
**To:** [REDACTED]  
**Subject:** RE: Mississippi Legislators

Some thoughts on a speaker (conservative) from the academic sector

Cameron Quinn - IFES - she was with the Commonwealth of Virginia as the State Board of Elections Director before going to IFES and has been appointed as an academic advisor to the Carter-Baker Commission

John Samples - Cato Institute - also an academic advisor to the Carter-Baker Commission

Juliet E. Thompson  
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Washington, DC 20005  
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011475

"Tom O'Neill" [REDACTED]

06/03/2005 08:49 AM

To jthompson@eac.gov

cc

Subject RE: Mississippi Legislators

Thanks, Julie.

Tom

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

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

**Sent:** Friday, June 03, 2005 8:32 AM

**To:** [REDACTED]

**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

Juliet E. Thompson  
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1225 New York Ave., NW, Ste 1100  
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011476

Juliet E. Thompson/EAC/GOV  
06/06/2005 11:16 AM

To "Tom O'Neill" [REDACTED]<[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Mississippi Legislators [REDACTED]

Some thoughts on a speaker (conservative) from the academic sector

Cameron Quinn - IFES - she was with the Commonwealth of Virginia as the State Board of Elections Director before going to IFES and has been appointed as an academic advisor to the Carter-Baker Commission

John Samples - Cato Institute - also an academic advisor to the Carter-Baker Commission

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(202) 566-3100  
"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
06/03/2005 08:49 AM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

Thanks, Julie.

Tom

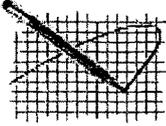
-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Friday, June 03, 2005 8:32 AM  
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(202) 566-3100

011477



Juliet E. Thompson/EAC/GOV

06/03/2005 08:31 AM

To "Tom O'Neill" [REDACTED] >@GSAEXTERNAL

cc

bcc

Subject Re: Mississippi Legislators 

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

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011478

Juliet E. Thompson/EAC/GOV  
06/02/2005 12:27 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC  
bcc  
Subject Re: Arrangements for June 30 Meeting

Tom,

The following answers, I hope, your questions. I am happy to discuss this further.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

EAC has a meeting location for this meeting and the hearing that will follow. The meeting and hearing will be held at the Marriot Marquis Hotel. I will have staff provide the address and room.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

While EAC has not yet made arrangements for a transcriber, we will as we will need one for the meeting and the hearing.

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

Yes, EAC will have staff available for this function.

4. Will the EAC issue the news release about the meeting and the panel?

Yes.

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

Federal travel regulations apply. However, once you have made recommendations on panelists and the Commission has approved those panelists, we will take care of their travel arrangements and accommodations.

Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin.

I can imagine that the Commission will not want to use Arizona. There is a great deal of controversy

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around some proposed legislation that was introduced and passed by the Arizona legislature last year. EAC has not yet taken a position on that controversy, but may. Until such time as EAC has formalized its opinion on this, EAC will not want to invite a public debate on this issue.

I will call you later to discuss any questions or concerns. I am in a meeting from 1 - 3 (EDT)

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" [REDACTED]



"Tom O'Neill" [REDACTED]

06/01/2005 10:47 PM

To jthompson@eac.gov

cc klynndyson@eac.gov

Subject Arrangements for June 30 Meeting

Julie,

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

4. Will the EAC issue the news release about the meeting and the panel?

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay

011480

for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- is [REDACTED]

Tom O'Neill

011481

groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation***

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

***Recommendation 7: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

DRAFT

## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud; when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”

NEXIS Charts

DRAFT

Case Charts

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

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

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

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

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

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

Harry Van Sickle, Commissioner of Elections, Pennsylvania

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

Sharon Priest, former Secretary of State, Arkansas

**DRAFT**

**Appendix 2**  
**List of Literature Reviewed**

**Reports**

People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.

Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.

Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.

Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.

National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.

Alec Ewald, “A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” The Sentencing Project, November 2005.

American Center for Voting Rights “Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election,” August 2, 2005.

The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

Democratic National Committee, “Democracy at Risk: The November 2004 Election in Ohio,” DNC Services Corporation, 2005

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### **Books**

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<http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>

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### Appendix 3

## Excerpt from “Machinery of Democracy,” a Brennan Center Report

### APPENDIX C

#### BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR

Excerpted from pp. 8-19

#### METHODOLOGY

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

#### IDENTIFICATION OF THREATS

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.<sup>20</sup> Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

### **PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.