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If yes, how many? \_\_\_ Of those, how many were Hispanic? \_\_\_

a) Were they permitted to vote a provisional ballot? Yes \_\_\_ How many? \_\_\_ Of those, how many were Hispanic? \_\_\_ Explain the process, including what the board member did with the completed ballot:

b) Were they permitted to vote an emergency ballot? Yes \_\_\_ How many? \_\_\_ Of those, how many were Hispanic? \_\_\_ Explain the process, including what the board member did with the completed ballot

\*469 VIII. CHART SUMMARY (Continued)

4. PERSONS NOT PERMITTED TO VOTE (Record specific instances on Chart D)

Did you observe any voters who were turned away and not permitted to vote? Yes \_\_\_ No \_\_\_

If yes, how many? \_\_\_ Of those, how many were Hispanic? \_\_\_ Explain the process:

5. PERSONS CHALLENGED (Record specific instances on Chart E)

Did you observe any voters being challenged? Yes \_\_\_ No \_\_\_

If yes, how many? \_\_\_ Of these, how many were Hispanic? \_\_\_

a) Were they permitted to vote? Yes \_\_\_ No \_\_\_ How many? \_\_\_ Of those, how many were Hispanic? \_\_\_ Explain the process, including what the board member did with the completed ballot:

b) Did the challenger complete a Challenger's affidavit for all persons challenged? Yes \_\_\_ No \_\_\_ If no, How many? \_\_\_ What were the races of each?

\*470 IX. GENERAL QUESTIONS ON ASSISTANCE (Individual accounts of language assistance are to be recorded on Chart A)

1. Was Spanish language assistance available when you were present at the site?

Yes \_\_\_ No \_\_\_ If not, specify WD/ED, record time frames and circumstances.

2. Were there any voters who were unable to sign their names?

Yes \_\_\_ No \_\_\_

If yes, were they Spanish speaking? Yes \_\_\_ No \_\_\_ Were they offered assistance in casting their ballot? Yes \_\_\_ No \_\_\_

If so, in what language? \_\_\_ If no, explain: \_\_\_

3. Did you observe voters who verbally sought or appeared to have needed assistance but did not receive it? Yes \_\_\_ No \_\_\_ If yes, explain. Include WD/ED.

4. What was the average waiting time for assistance?

\*471 5. Did anyone bring a personal assistor (i.e., a relative or a friend)? Yes \_\_\_ No \_\_\_ How many? \_\_\_

If yes, were voters allowed to take a personal assistor into the booth? Yes \_\_\_ No \_\_\_ If no, explain:

6. Were voters informed there was a time limit on how long a voter could take to cast the ballot?

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Yes \_\_\_ No \_\_\_ If so, what was the time limit?

Was it enforced? Yes \_\_\_ No \_\_\_ If so, explain:

7. Were voters permitted to bring marked sample ballots or other election material into the voting booth?

Yes \_\_\_ No \_\_\_ If no, explain:

8. Based on your observation of assistance, for each ED, explain generally what happens to the voter who needs language assistance from the time they enter the polling place until they leave.

**\*472 X. TREATMENT OF HISPANIC VOTERS AND HISPANIC BOARD WORKERS**

1. Did you observe any Hispanic voter being treated rudely (describe the actual words used and actions taken) by a board worker or translator? Yes \_\_\_ No \_\_\_ If yes, please explain. Use additional sheets or back of paper if necessary. Please obtain the names and ward and district of Board Workers involved.

2. Did you observe any Hispanic and/or bilingual board worker being treated rudely by a board worker?

Yes \_\_\_ No \_\_\_ If yes, please obtain the names and ward and district of Board Workers involved.

**XI. GENERAL**

1. Describe any specific problems that occurred but are not recorded elsewhere in the report.

2. Describe the nature and extent of your contact with board workers, including any noteworthy contact. Please identify by name and election district, and explain.

**\*473 CHART ASSISTANCE IN A MINORITY LANGUAGE (CHECKLIST)(Purpose: record the assistance process) WD/ED \_\_\_**

Voter \_\_\_\_\_

Language spoken: \_\_\_\_\_

Time begin: \_\_\_ Time end: \_\_\_

Name of: board worker / translator / challenger:

Who initiated the contact? \_\_\_\_\_

In what language? \_\_\_\_\_

Assistance occurred: (circle) inside booth outside booth. Was a Disability Certificate Used? (circle one) Yes No

How was the ballot cast? (circle one) machine / provisional / emergency

If voted by provisional or emergency ballot, state reason for not being permitted to vote on the machine:

Did the official providing assistance (circle response):

ask if assistance was needed? YES / NO In English or Spanish?

ask voter for choice of assistant? YES / NO In English or Spanish?

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explain how to operate the machine? YES / NO in English or Spanish?

allow assistant into booth YES / NO in English or Spanish?

(English speaking board worker) play a role when the translator provided assistance? YES / NO in English or Spanish?

interpret each proposition on the ballot (if applicable)? YES / NO in English or Spanish?

name each candidate on the ballot? YES / NO in English or Spanish?

explain when the voter can vote for more than one

candidate for an office (if applicable)? YES / NO in English or Spanish?

\*474 explain write-in procedures (if applicable)? YES / NO in English or Spanish?

offer a voter rights pamphlet? YES / NO in English or Spanish?

What else happened during this assistance not captured by the above questions?

CHART BVOTERS NOT RECEIVING LANGUAGE ASSISTANCE (Purpose: record information  
 about voters who need language assistance but do not receive it) Name Race Time  
 WD/ED

Address Language spoken

Did the voter request or ask for assistance? Yes / No

Did the voter appear to need assistance? Yes / No

If yes, state observations:

\*475 CHART CVOTING WITHOUT ASSISTANCE (by Provisional or Emergency Ballot)  
 (Purpose: record the provisional and emergency ballot process) (For race use:  
 (A) for Asian, (B) for Black, (H) for Hispanic, (W) for White) Name Race Time  
 WD/ED

Address Language spoken

How Voted (circle) Provisional Emergency

Reason for not being permitted to vote on machine:

\*476 CHART DPERSONS NOT PERMITTED TO VOTE IN ANY MANNER (Purpose: record  
 turn-aways) (For race use: (A) for Asian, (B) for Black, (H) for Hispanic, (W)  
 for White) Name Time

Address Race

Language Spoken

Name/title of official not permitting vote WD/ED

Reason for not permitting vote

What did the official suggest the voter do in order to vote?

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Was the voter offered a provisional ballot? Yes / No

Reason voter believes he/she should be permitted to vote

Referred to Federal Examiner Yes / No

\*477 CHART EPERSONS CHALLENGED(Purpose: record the challenge process) (For  
 race use: (A) for Asian, (B) for Black, (H) for Hispanic, (W) for White) Name  
 of Challenger (Race) Name of Voter (Race) Vote on Machine (Y or N) Reason for  
 Challenge Did the challenger communicate directly with the voter? What was  
 said? Treatment of voter?

**WORK SHEET**

(Questions to answer when you call to the command center or questions to be prepared to answer when you call into the  
 command center)

1. Number of voters since initial or last call:

Time Total Number of Voters Of which the following were Hispanic

\*478 How many voters needed assistance?

Type of assistance needed?

Provisional/Emergency voting?

Materials - available by WD/ED:

Bilingual Board Workers or Translators available by W/DED:

Any Master Board Workers, Challengers, Police, Plain Clothes Investigators, or Press present?

\*479 Appendix G

Interference Laws

Alabama

Code of Alabama § 17-15-1. Grounds.

The election of any person declared elected to any office which is filled by the vote of a single county, or to the office of the  
 said elections a qualified elector for any of the following causes - offers to bribe, bribery, intimidation or other misconduct  
 calculated to prevent a fair free and full exercise of the elective franchise.

Code of Alabama § 17-23-1. Bribing or attempting to influence voter.

Any person who, by bribery or offering to bribe, or by any other corrupt means, attempts to influence any elector in giving  
 his vote, or deter him from giving the same, or to disturb, or to hinder him in the free exercise of the right of suffrage, at any  
 election, must, on conviction, be fined not less than \$50 nor more than \$500.

Code of Alabama § 17-23-8. Disturbing elector on election day.

Any person who, on election day, disturbs or prevents, or attempts to prevent, any elector from freely casting his ballot  
 must, on conviction, be fined not less than \$500.00 nor more than \$1,000.00, and also sentenced to hard labor for the county,  
 or imprisoned in the county jail for not less than six months nor more than one year.

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## Alaska

Alaska Statute § 15.56.030. Unlawful interference with voting in the first degree.

A person commits the crime of unlawful interference with voting in the first degree if the person: 1) uses, threatens to use, or causes to be used force, coercion, violence, or restraint, or inflicts, threatens to inflict, or causes to be inflicted damage, harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting in an election; or 2) knowingly pays, offers to pay, or causes to be paid money or other valuable thing to a person to vote or refrain from voting in an election; or solicits, accepts, or agrees to accept money or other valuable thing with the intent to vote for or refrain from voting for a candidate at an election or for an election proposition or question.

## \* 480 Arizona

Arizona Revised Statute § 16-1013. Coercion or intimidation of elector, classification.

It is unlawful for a person knowingly: 1) Directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election. 2) By abduction, duress or any forcible or fraudulent device or contrivance whatever, to impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce or to prevail upon a voter either to cast or refrain from casting his vote at an election, or to cast or refrain from casting his vote for any particular person or measure at an election.

## Arkansas

Arkansas Code of 1987 Annotated § 7-1-104. Miscellaneous felonies - penalties.

It shall be unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector, and it shall be unlawful to attempt to prevent any qualified elector from voting at any election.

## California

California Election Code § 18540. Use of threats to influence voting.

Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years. Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from \*481 voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

## Colorado

Colorado Revised Statute § 1-13-711. Interference with voter while voting.

Any person who interferes with any voter who is inside the immediate voting area or is making a ballot or operating a voting machine at any election provided by law is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

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Connecticut

Connecticut General Statute § 53-169. Dispersion of riotous assembly.

Disturbance of meetings and elections. Refusal to assist public officer. Breach of the peace; intimidation, libel. Indecent or harassing telephone calls. Disorderly conduct. False information concerning bombs. Loitering. Soliciting from occupants of vehicles.

Delaware

Delaware Code Annotated - 11 Del. C. § 1207. Improper influence; Class A misdemeanor.

A person is guilty of improper influence when the person threatens unlawful harm to any person with intent to influence the latter's decision, opinion, recommendation, vote or other exercise of discretion as a public servant party officer or voter

Delaware Code Annotated - 15 Del. C. § 5303. Civil remedy for interference with voting.

Whoever, being a duly qualified elector of this State according to the Constitution and laws thereof, is prevented from voting, or obstructed in his or her effort to vote at any election, by reason of any interference by any person or persons, or military power, or other power, exercising or attempting to exercise force, intimidation or threats, or requiring any qualifications or conditions unknown to such Constitution and laws, shall be deemed and taken to have suffered private damage and injury, and shall have civil remedy thereof, in the court of this State, by civil action against every person who promoted such interference, whether by active participation, or by advising, counseling, or in anywise encouraging the same.

\*482 District of Columbia

D.C. Code § 1-1001.14. Corrupt election practices

Any person who shall register, or attempt to register, or vote or attempt to vote under the provisions of this subchapter and make any false representations as to his or her qualifications for registering or voting or for holding elective office, or be guilty of violating § 1-1001.07(a)(2)(D), § 1-1001.09, § 1-1001.13, or § 1-1001.14 or be guilty of bribery or intimidation of any voter at an election, or being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in an election, or attempt to vote in an election held by a political party other than that to which he or she has declared himself or herself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this subchapter, knowingly make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of Chapter 11 of this title, shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

Florida

Florida Statutes § 104.0515. Voting rights; deprivation of, or interference with, prohibited; penalty.

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose, or for the purpose of causing such other person to vote for, or not vote for, any candidate for any office at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

Georgia

Official Code of Georgia Annotated § 21-2-566. Interference with primaries and elections generally.

Any person who uses or threatens violence to any poll officer or interrupts or improperly interferes with the execution of his or her duty; willfully blocks or attempts to block the avenue to the door of any polling place; uses or threatens violence to any elector to prevent him or her from voting.

## \*483 Hawaii

Hawaii Revised Statutes Annotated § 19-3. Election frauds.

Every person who, directly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise.

## Idaho

Idaho Code § 18-2313. Riotous conduct and interference with election.

Any person who willfully disturbs, or is guilty of any riotous conduct at or near, any election place or voting precinct, with intent to disturb the same, or interferes with the access of the electors to the polling place, or in any manner, with the free exercise of the election franchise of the voters, or any voter there assembled, or disturbs or interferes with the canvassing of the votes, or with the making of the returns, is guilty of a misdemeanor.

## Illinois

Illinois Compiled Statutes Annotated § 10 ILCS 5/29-18. Conspiracy to prevent vote - liability.

Conspiracy to prevent vote--Liability. If 2 or more persons conspire to prevent by force, intimidation, threat, deception, forgery or bribery any person from registering to vote, or preventing any person lawfully entitled to vote from voting, or preventing any person from supporting or opposing, in a legal manner, the nomination or election of any person for public or political party office, or a proposition voted upon at any election, or to injure any person or such person's property on account of such vote, support or advocacy, and if one or more persons so conspiring do, attempt or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property or deprived of having or exercising any right, privilege or immunity secured by the Constitution or laws of the United States or the State of Illinois relating to the conduct of elections, voting, or the nomination or election of candidates for public or political party office, all persons engaged in such conspiracy shall be liable to the party injured or any person affected, in any action or proceeding for redress.

\*484 Illinois Compiled Statutes Annotated, Illinois Const., Article 3 § 3. Elections.

All elections shall be free and equal. An election is free where the voters are exposed to no intimidation or improper influence and where each voter is allowed to cast his ballot as his own conscience dictates; elections are equal when the vote of each voter is equal in its influence upon the result to the vote of every other elector--where each ballot is as effective as every other ballot. *People ex rel. Elder v. Quince*, 309 Ill. App. 466, 57 N.E.2d 492 (1941).

## Indiana

Indiana Code Annotated § 3-14-3-18. Improper collateral acts or threats to influence voter's vote.

A person who, for the purpose of influencing a voter or candidate, seeks to enforce the payment of a debt by force or threat of force or damages the business or trade of the voter or candidate: commits a Class D felony.

Indiana Statutes Annotated § 3-14-3-4. Obstruction or interference with election officers or voters.

A person who knowingly obstructs or interferes with an election officer in the discharge of the officer's duty; or knowingly obstructs or interferes with a voter within 50 feet of the polls: commits a Class D felony.

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Iowa

Iowa Code § 49.107. Prohibited acts on election day.

Interrupting, hindering, or opposing any voter while in or approaching the polling place for the purpose of voting is prohibited on any election day.

Iowa Code § 72.27. Misconduct by election official.

A precinct election official who knowingly causes a voter to cast a vote contrary to the voter's intention or wishes; or changes any ballot, or in any way causes any vote to be recorded contrary to the intent of the person casting that vote; or refuses or rejects the vote of any qualified voter commits a serious misdemeanor.

Kansas

Kansas Statute Annotated § 23-2415. Intimidation of voters.

Intimidation of voters is intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such person to vote for, or not to vote for, any candidate for any office or question submitted at any election.

\*485 Kentucky

Kentucky Revised Statutes Annotated § 119.155. Preventing voter from casting ballot--interfering with election.

Any person who unlawfully prevents or attempts to prevent any voter from casting his ballot, or intimidates or attempts to intimidate any voter so as to prevent him from casting his ballot, or who unlawfully interferes with the election officers in the discharge of their duties, shall be guilty of a Class D felony. Any person who, by himself or in aid of others, forcibly breaks up or prevents, or attempts to break up or prevent, or obstructs or attempts to obstruct, the lawful holding of an election, shall be guilty of a Class A misdemeanor.

Louisiana

Louisiana Statutes § 14:119. Bribery of voters.

Bribery of voters is the giving or offering to give, directly or indirectly, any money, or anything of apparent present or prospective value to any voter at any general, primary, or special election, or at any convention of a recognized political party, with the intent to influence the voter in the casting of his ballot. The acceptance of, or the offer to accept, directly or indirectly, any money, or anything of apparent present or prospective value, by any such voters under such circumstances shall also constitute bribery of voters. Whoever commits the crime of bribery of voters shall be fined not more than two thousand dollars or imprisoned with or without hard labor for not more than two years, or both, for the first offense. On a second offense, or any succeeding offense, the penalty shall be a fine of not more than five thousand dollars or imprisonment at hard labor for not more than five years, or both.

Louisiana Statutes § 18:1462. Acts prohibited on election day; electioneering; exception; enforcement; penalty.

The Legislature of Louisiana recognizes that the right to vote is a right that is essential to the effective operation of a democratic government. Due to a past, longstanding history of election problems, such as multiple voting, votes being recorded for persons who did not vote, votes being recorded for deceased persons, voting by non-residents, vote buying, and voter intimidation, the legislature finds that the state has a compelling interest in securing a person's right to vote in an environment which is free from intimidation, harassment, confusion, obstruction, and undue influence. The legislature, therefore, enacts this Subsection to provide for a six hundred foot campaign-free zone around polling places to provide to each voter such an environment in which to exercise his right to vote. Except as otherwise specifically provided by law, it shall be unlawful for any person, between the hours of 6:00 a.m. and 9:00 p.m., to perform or cause to be performed any of the following acts within any polling place being used in an election on election day or within any place wherein absence

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voting is being conducted. \*486 or within a radius of six hundred feet of the entrance to any polling place being used in an election on election day or any place wherein absentee voting is being conducted.

Louisiana Revised Statutes § 47:1405. Secrecy of ballot, interference with voter; penalty.

No person shall interfere or attempt to interfere with any voter when marking his ballot, or endeavor to induce any voter before voting to show how he is about to mark or has marked his ballot, or influence or attempt to influence any voter to vote for or against a particular candidate, or otherwise violate any of the provisions of this Chapter or rules adopted pursuant thereto. Whoever violates this Section shall be punished in accordance with R.S. 18:1461, R.S. 14:119, R.S. 14:120, R.S. 14:136, or any other applicable law enacted to punish violations of laws relating to other elections.

Louisiana Revised Statutes § 18:1451. Election Offenses; penalties.

No person shall knowingly, willfully, or intentionally: 1) Offer, promise, solicit, or accept money or anything of present or prospective value to secure or influence a vote or registration of a person. 2) Intimidate, directly or indirectly, any voter or prospective voter in matters concerning voting or nonvoting or registration or nonregistration. 3) Offer money or anything of present or prospective value or use, directly or indirectly, any form of intimidation to influence the action or encourage inaction of any public official with regard to the duties of his office or to influence a commissioner or watcher in his decision to serve or not to serve as such or in the performance of his duties on election day. Whoever violates any provision of this Section shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both. On a second offense, or any succeeding offense, the penalty shall be a fine of not more than two thousand five hundred dollars or imprisonment for not more than five years, or both.

#### Maine

Maine Revised Statutes - 21-A, M. R. S. § 674. Violations and penalties

A person commits a Class E crime if that person interferes with a voter attempting to cast a vote or interferes with or attempts to influence a voter in marking that voter's ballot.

#### Maryland

Maryland Annotated Code, Article 33, § 16-201. Offenses relating to voting.

Generally, a person may not willfully and knowingly influence or attempt to influence a voter's voting decision through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward.

\*487 Maryland Annotated Code Article 33 § 16-101. Offenses relating to registration.

Generally, a person may not willfully and knowingly prevent, hinder, or delay a person having a lawful right to register from registering, through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward.

#### Massachusetts

Massachusetts Annotated Laws Chapter 56, § 29. Interfering with voter.

Whoever willfully and without lawful authority hinders, delays or interferes with, or aids in hindering, delaying or interfering with, a voter while on his way to a primary, caucus or election, while within the guard rail, while marking his ballot or while voting or attempting to vote, or endeavors to induce a voter, before depositing his ballot, to disclose how he marks or has marked it, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year.

Massachusetts Annotated Laws Chapter 56, § 30. Willfully obstructing voting.

Whoever willfully obstructs the voting at a primary, caucus or election shall be punished by a fine of not more than one

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hundred dollars.

Massachusetts Annotated Laws - Chapter 56, § 31. Illegal Challenging. Any person challenging a qualified voter for purposes of intimidation, or of ascertaining how he voted, or for any other illegal purpose shall be punished by a fine of not more than one hundred dollars.

Michigan

Michigan Compiled Laws Service § 168.931. Prohibited conduct; violation as misdemeanor; "valuable consideration."

A person is guilty of a misdemeanor if that person either directly or indirectly, discharge or threaten to discharge an employe of the person for the purpose of influencing the employe's vote at an election.

Michigan Compiled Laws Service § 168.932. Prohibited conduct; violation as felony.

A person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state is guilty of a felony.

\*488 Minnesota

Minnesota Statutes § 62A.72. Interference with use of public property.

For the purpose of protecting the free, proper and lawful access to, egress from and proper use of public property, and for the purpose of protecting the conduct of public business therein or thereon, free from interference, or disruption or the threat thereof, the legislature or any public officer, agency or board having the supervision thereof may to that end promulgate reasonable rules and regulations. Whoever, intentionally, or through coercion, force or intimidation, denies or interferes with the lawful right of another to the free access to or egress from or to use or remain in or upon public property or in like manner interferes with the transaction of public business therein or thereon may be sentenced to imprisonment for not more than one year or a fine of not more than \$3,000 or both.

Minnesota Statute § 204C.06. Conduct in and near polling places.

Lingering near polling place. An individual shall be allowed to go to and from the polling place for the purpose of voting without unlawful interference. No one except an election official or an individual who is waiting to register or to vote shall stand within 100 feet of the entrance to a polling place. The entrance to a polling place is the doorway or point of entry leading into the room or area where voting is occurring. A violation of this subdivision is a gross misdemeanor.

Minnesota Statute § 211B.07. Undue influence on voters prohibited.

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

Mississippi

Mississippi Code Annotated § 23-17-59. Unlawful to interfere with or influence vote of elector.

It is unlawful for a person to interfere with or influence the vote of an elector on a measure by means of violence, threats, intimidation, enforcing the payment of a debt, bring a suit or criminal prosecution, any threat or action affecting a person's conditions of employment other corrupt means.

\*489 Mississippi Code Annotated § 97-3-97. Threats and intimidation; whitecapping.

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Any person or persons who shall, by placards, or other writing, or verbally, attempt by threats, direct or implied, of injury to the person or property of another, to intimidate such other person into an abandonment or change of home or employment, shall upon conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or in the penitentiary not exceeding five years, as the court, in its discretion may determine.

Mississippi Code Annotated § 27-1-1. Conspiracy.

If two or more persons conspire either to prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements, or property belonging to or used by another, or with the use of employment thereof, or to overthrow or violate the laws of this state through force, violence, threats, intimidation, or otherwise;

#### Missouri

Revised Statutes of the State of Missouri § 155.639 Three hours off work to vote--interference by employer a class four offense.

Any person entitled to vote at any election held within this state shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of three hours between the time of opening and the time of closing the polls for the purpose of voting, and any such absence for such purpose shall not be reason for the discharge of or the threat to discharge any such person from such services or employment, and such employee, if he votes, shall not, because of so absents himself, be liable to any penalty or discipline, nor shall any deduction be made on account of such absence from his usual salary or wages; provided, however, that request shall be made for such leave of absence prior to the day of election, and provided further, that this section shall not apply to a voter on the day of election if there are three successive hours while the polls are open in which he is not in the service of his employer. The employer may specify any three hours between the time of opening and the time of closing the polls during which such employee may absent himself.

Revised Statutes of the State of Missouri § 155.115. Polling places, how designated, exception--notice to voters--voters not required to go to more than one polling place--elderly and handicapped polling places, common site.

Each election within its jurisdiction, the election authority shall designate a polling place for each precinct within which any voter is entitled to vote at the election. No person shall be required to go to more than one polling place to vote on the same day. Each local election authority may \*490 designate one common site as an election day polling place designed for accessibility to the handicapped and elderly. In addition to being able to supply such voters with their appropriate ballots, and being open during regular voting hours, such a polling place shall otherwise be staffed and operated in accordance with law.

#### Montana

Montana Code Annotated § 45-7-102. Threats and other improper influence in official and political matters.

A person commits an offense under this section if the person purposely or knowingly threatens harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter.

Montana Code Annotated § 13-35-218. Coercion or undue influence of voters.

No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may use or threat to use any force, coercion, violence, restraint, or undue influence against any person; or inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

#### Nebraska

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Revised Statutes of Nebraska Annotated § 32-1510. Interference with voter registration; penalty.

Any person who causes any breach of the peace or uses any disorderly violence or threat of violence which impedes or hinders any registration of voters or revision of voter registration lists or interferes lawful proceedings of any deputy registrar shall be guilty of a Class 3 misdemeanor.

Revised Statutes of Nebraska Annotated § 32-910. Polling places; obstructions prohibited; restrictions on access.

Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place building and shall arrest any person obstructing such passageways.

\*491 Nevada

Nevada Revised Statutes Annotated § 293.710 Intimidation of voters.

It is unlawful for any person, in connection with any election or petition, whether acting himself or through another person in his behalf, to: (a) Use or threaten to use any force, coercion, violence, restraint or undue influence; (b) Inflict or threaten to inflict any physical or mental injury, damage, harm or loss upon the person or property of another.

New Hampshire

New Hampshire Revised Statutes Annotated § 354-A:11 Interference, Coercion or Intimidation.

It shall be an unlawful discriminatory act to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

New Hampshire Revised Statutes Annotated § 659:40 Bribing; Intimidation.

No person shall directly or indirectly bribe or intimidate any voter not to vote or to vote for or against any question submitted to voters or to vote for or against any ticket or candidate for office at any election. Whoever violates the provisions of this section shall be guilty as provided in RSA 640:2 or RSA 640:3.

New Jersey

New Jersey Statutes § 19:34-29. Obstructing or interfering with voter.

No person shall by abduction, duress or any forcible or fraudulent device or contrivance whatever, impede, prevent or otherwise interfere with the free exercise of the elective franchise by any voter, or compel, induce or prevail upon any voter either to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election.

New Jersey Statutes § 19:34-5. Interference with conduct of election.

No person shall, during an election, with intent to hinder or delay same, or to hinder or delay any voter in the preparation of his ballot, remove or destroy any of the ballots or pencils placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot. Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished by fine not exceeding five hundred dollars and imprisonment until such fine and the costs of the conviction are paid.

\*492 New Mexico

New Mexico Statutes Annotated § 1-20-14. Intimidation.

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Intimidation consists of including or attempting to induce fear in any member of a precinct board, voter, challenger or watcher by use of or threatened use of force, violence, infliction of damage, harm or loss or any form of economic retaliation, upon any voter, precinct board member, challenger or watcher for the purpose of impeding or preventing the free exercise of the elective franchise or the impartial administration of the Election Code. Whoever commits intimidation is guilty of a fourth degree felony.

#### New York

New York Consolidated Laws Service § 17-150. Duress and intimidation of voters.

Any person or corporation who directly or indirectly: 1) Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or, 2) By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or.

#### North Carolina

North Carolina General Statutes § 163-271. Intimidation of voters by officers made misdemeanor.

It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, \*493 or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. A violation of this section is a Class 2 misdemeanor.

North Carolina General Statutes § 163-273. Offenses of voters; interference with voters; penalty.

Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful: 1) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure. 2) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.

#### North Dakota

North Dakota Century Code § 12.1-14-02. Interference with elections A person is guilty of a class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally: 1) Injures, intimidates, or interferes with another because he is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election. 2) Injures, intimidates, or interferes with another in order to prevent him or any other person from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.

#### Ohio

Ohio Revised Code Annotated § 1599.24. Interference with conduct of election.

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No person shall attempt to intimidate an election officer, or prevent an election official from performing the official duties.

Oklahoma

Oklahoma Statutes - 26 Okl. St. § 16-113. Interference with voter or conduct of election

Any person who interferes with a registered voter who is attempting to \*494 vote, or any person who attempts to influence the vote of another by means of force or intimidation, or any person who interferes with the orderly and lawful conduct of an election shall be deemed guilty of a misdemeanor.

Oregon

Oregon House Bill 2584. Relating to elections.

No person shall obstruct an entrance of a building in which a polling place is located.

Pennsylvania

Pennsylvania Statutes - 25 P.S. § 3527. Interference with primaries and elections; frauds; conspiracy.

If any person shall prevent or attempt to prevent any election officers from holding any primary or election, under the provisions of this act, or shall use or threaten any violence to any such officer; or shall interrupt or improperly interfere with him in the execution of his duty; or shall block up or attempt to block up the avenue to the door of any polling place; or shall use or practice any intimidation, threats, force or violence with design to influence unduly or overawe any elector, or to prevent him from voting or restrain his freedom of choice; or shall prepare or present to any election officer a fraudulent voter's certificate not signed in the polling place by the elector whose certificate it purports to be; or shall deposit fraudulent ballots in the ballot box; or shall register fraudulent votes upon any voting machine; or shall tamper with any district register, voting check list, numbered lists of voters, ballot box or voting machine; or shall conspire with others to commit any of the offenses herein mentioned, or in any manner to prevent a free and fair primary or election, he shall be guilty of a felony of the third degree, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$15,000 or to undergo an imprisonment of not more than seven years, or both, in the discretion of the court.

Pennsylvania Statutes- 75 P.S. § 3047. Peace Officers; no police officer to be within one hundred feet of polling place, exceptions; presence of soldiers prohibited.

In no event may any police officer unlawfully use or practice any intimidation, threats, force or violence nor, in any manner, unduly influence or overawe any elector or prevent him from voting or restrain his freedom of choice, nor may any such police officer electioneer or directly or indirectly attempt to influence the election or electors while within one hundred feet of a polling place.

\*495 Rhode Island

Rhode Island General Laws § 17-23-5. Bribery or intimidation of voters - immunity of witnesses in bribery trials.

Every person who directly or indirectly gives, or offers to agree to give, to any elector or to any person for the benefit of any elector, any sum of money or other valuable consideration for the purpose of inducing the elector to give in or withhold that elector's vote at any election in this state, or by way of reward for having voted or withheld that elector's vote, or who uses any threat or employs any means of intimidation for the purpose of influencing the elector to vote or withhold that elector's vote for or against any candidate or candidates or proposition pending at an election, shall be guilty of a felony, and no person after conviction of this offense shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office, and no evidence given by any witness testifying upon the trial of any charge of bribery may be used against the person giving the evidence.

South Carolina

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South Carolina Code Annotated § 16-17-560. Assault or intimidation on account of political opinions or exercise of civil rights.

It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both.

South Carolina Code Annotated § 7-13-130. Managers' table; guardrail; general arrangement; preservation of right to vote and secrecy of ballot.

The polling places shall be provided with a table for the managers. The polls shall be provided with a guardrail, so that no one except as herein authorized shall approach nearer than five feet to the booths in which the voters are preparing their ballots. The managers at each voting place shall arrange the table, desk or other place upon which the ballot boxes shall be placed so that there shall be no crowding or confusion immediately around the boxes, and suitable means shall be provided to enable each voter to approach the boxes and deposit his ballot without interference or hindrance. The right to vote of each person so entitled and the secrecy of the ballot shall be preserved at all times.

\*496 South Carolina Code Annotated § 7-13-140. Maintenance of order; police powers of managers.

Managers of election are clothed with such police powers as may be necessary to carry out the provisions of this article. The managers shall possess full authority to maintain good order at the polls and to enforce obedience to their lawful commands during an election and during the canvass and counting of the votes. All peace officers shall answer all such calls for help in preserving the peace as may be made by the managers of election.

South Carolina Code Annotated § 7-13-150. Penalty for failure to assist in maintaining order.

Any person who, when summoned or called upon by peace officers shall fail or refuse to assist him in maintaining the peace and good order at the polls shall be fined in a sum not to exceed one hundred dollars or imprisoned not to exceed thirty days.

South Carolina Code Annotated § 7-13-160. Peace officers shall enter polling place only on request or to vote.

No sheriff, deputy sheriff, policeman or other officers shall be allowed to come within the polling place except to vote unless summoned into it by a majority of the managers. On failure of any sheriff, deputy sheriff, policeman or other officer to comply with the provisions of the preceding sentence, the managers of election, or one of them, shall make affidavit against such sheriff, deputy sheriff, policeman or other officer for his arrest.

South Carolina Code Annotated § 7-13-170. Procedure when managers fail to attend, take charge of, or conduct election.

In case all of the managers shall fail to attend at the same time and place appointed for holding such poll or shall refuse or fail to act or in case no manager has been appointed for such poll, it shall be lawful for the voters present at the precinct voting place on that day to appoint from among the qualified voters of such precinct or club the managers to act as managers in the place and stead of the absent managers, and any one of the managers so appointed shall administer the oath to the other managers. But if the duly appointed managers attend in a reasonable time, they shall take charge of and conduct the election.

#### South Dakota

South Dakota Codified Laws § 17-18-3. Electioneering, offices, communications centers, and polling prohibited near polling place - violation as misdemeanor.

No person may engage in any practice which interferes with the voter's free access to the polls or disrupts the administration of the polling place, or conduct, on the day of an election, any exit poll or public opinion with voters \*497 within 100 feet of a polling place.

## Tennessee

Tennessee Code Annotated § 2-7-111. Posting of sample ballots and instructions - arrangement of polling place - restrictions.

The exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of intimidation and fraud.

Tennessee Code Annotated § 2-7-109. Polling places.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions design to prevent undue influence or intimidation of the free and fair expression of the will of the electors.

## Texas

Texas Election Code § 2.054. Coercion Against Candidacy Prohibited.

A person commits an offense if by intimidation or by means of coercion the person influences or attempts to influence a person to not file an application for a place on the ballot or a declaration of write-in candidacy in an election that may be subject to this subchapter. In this section, 'coercion' has the meaning assigned by Section 1.07, Penal Code. An offense under this section is a Class A misdemeanor unless the intimidation or coercion is a threat to commit a felony, in which event it is a felony of the third degree.

## Utah

Utah Code Annotated § 20A-1-501. Polling place - prohibited activities.

A person may not obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

## Vermont

Vermont Statutes Annotated § 2508. Campaigning during polling hours; voter access.

On the walks and driveways leading to a building in which a polling place is located, no candidate or other person may physically interfere with the progress of a voter to and from the polling place.

## \*498 Virginia

Virginia Code Annotated § 14.2-507. Prohibited conduct; intimidation of voters; disturbance of election; how prevented; penalties.

It shall be unlawful for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot. The officers of election may order a person violating this subsection to cease such action. If such person does not promptly desist, the officers of election, or a majority of them, may order the arrest of such person by any person authorized by law to make arrests, and, by their warrant, may commit him to the county or city jail, as the case may be, for a period not exceeding twenty-four hours. Any person violating this subsection shall be guilty of a Class 1 misdemeanor.

## Washington

Revised Code of Washington § 29.51.020. Acts prohibited in vicinity of polling place - prohibited practices as to ballots - penalty.

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No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

West Virginia

West Virginia Code § 3-9-10. Disorder at polls; prevention; failure to assist in preventing disorder; penalties.

Any person who shall, by force, menace, fraud or intimidation, prevent or attempt to prevent any officer whose duty it is by law to assist in holding an election, or in counting the votes cast thereat, and certifying and returning the result thereof, from discharging his duties according to law; or who shall, by violence, threatening gestures, speeches, force, menace or intimidation, prevent or attempt to prevent an election being held; or who shall in any manner obstruct or attempt to obstruct the holding of an election, or who shall, by any manner of force, fraud, menace or intimidation, prevent or attempt to prevent any voter from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, shall be guilty of a misdemeanor, and, upon conviction, fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, in the discretion of the court.

Any person who, being thereto commanded by the commissioners of election, or either of them, shall fail or refuse to assist to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars.

Wisconsin

Wisconsin Statutes § 5.33. Polling place requirements.

No polling place may be situated so as to interfere with or distract election officials from carrying out their duties. The municipal clerk and election inspectors shall prevent interference with and distraction of electors at polling places.

Wyoming

Wyoming Statutes Annotated § 22-15-109. Poll watchers; certification; qualification; authority; removal.

Additional poll watcher from each political party may be accommodated in the polling premises without disrupting the polling process. A poll watcher is authorized to observe voter turn out and registration and may make written memoranda but shall not challenge voters, conduct electioneering activities or disrupt the polling process. The chief judge may remove a poll watcher from the polling premises for disturbing the polling place, or for any other violation of the Election Code.

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FN11. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1.

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[FN2]. 42 U.S.C. § 1973 et seq. (2001).

[FN3]. "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Place of Choosing Senators." U.S. Const. art. I, § 4.

[FN4]. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

[FN5]. See e.g. National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq.; Voting Accessibility Act of 1984, 42 U.S.C. § 1973cc et seq.; Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff et seq.

[FN6]. The goal of voter registration was disenfranchisement of blacks and new immigrants. See e.g. Frances Piven & Richard Cloward, *Why Americans Don't Vote 78-95* (Pantheon Books 1988); Mark Thomas Quinlivan, *One Person, One Vote Revisited: The Inevitable Necessity of Judicial Intervention in the Realm of Voter Registration*, 137 *U. Pa. L. Rev.* 2361 (1989).

[FN7]. 238 U.S. 347 (1915).

[FN8]. 307 U.S. 268 (1939).

[FN9]. 273 U.S. 536 (1927).

[FN10]. 371 U.S. 649 (1944).

[FN11]. 345 U.S. 461 (1953).

[FN12]. See *U.S. v. Alabama*, 252 F. Supp. 95, 99 (M.D. Ala. 1966) (stating that "the effect of the new suffrage provisions in the 1901 Constitution on the Negro voters was dramatic"); see *Hansberr v. Virginia Board of Elections*, 383 U.S. 663, 666 (1966).

[FN13]. See *U.S. v. Louisiana*, 380 U.S. 145 (1965); *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala. 1949), *aff'd* 356 U.S. 933 (1949).

[FN14]. *Louisiana*, 380 U.S. at 151 (holding that the "provisions of the Louisiana Constitution and statutes which require voters to satisfy registrars of their ability to 'understand and give a reasonable interpretation of any section' of the Federal or Louisiana Constitution violate the Constitution.")

[FN15]. 42 U.S.C. § 1971(a)(4).

[FN16]. 42 U.S.C. § 1971(c).

[FN17]. Congress has the authority to enact procedures for elections for federal office. See U.S. Const. art. I, § 4. See also United States General Accounting Office, *Elections--The Scope of Congressional Authority in Election Administration*, 2101 *GAO* 250476 (Mar. 13, 2001) (the General Accounting Office providing an overview of federal law in this area).

[FN18]. 42 U.S.C. § 1971(c). These provisions:

- Posited a rebuttable presumption that people were literate who finished the sixth grade;
- Declared that actions by state or local officials were state action;
- Allowed courts to make pattern or practice findings and thereafter issue declarations that "any person of such race or color within the affected area" was qualified to vote if certain minimal facts were presented;
- Stated that such persons must be permitted to vote in any election.

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- Established court-appointed voting referees who could receive applications for an order that people were qualified to vote and had been deprived of the opportunity to register under color of law, take evidence, and report to the court whether the applicant was qualified to vote. This was followed by a show-cause order within 10 days on why an order should not be entered in accordance with the report; there would be a hearing only if there were genuine issues of material fact; and
- Allowed for three-judge courts if a finding of a pattern or practice of discrimination was requested.

[FN19]. Many, as probate judge or circuit clerk, were the highest administrative county official.

[FN20]. *South Carolina v. Katzenbach*, 383 U.S. 301, 314 (1966) (stating that "[v]oting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 manhours spent combing through registration records in preparation for trial").

[FN21]. *Id.* at 313.

[FN22]. *Id.* at 328.

[FN23]. 42 U.S.C. § 1973c.

[FN24]. 42 U.S.C. § 1973b. These "tests or devices" were suspended in states and counties determined by a formula in Section 4 of the Voting Rights Act based on the use of literacy tests and other pre-application devices (such as having current voters vouch for your good moral character), and low voter turnout. See 42 U.S.C. § 1973b. Later, this provision was made permanent and nationwide. See 42 U.S.C. § 1973ag. Originally, states and counties covered under the formula could terminate their special coverage ("bail out") after five years by showing, in a lawsuit before a three-judge court in the federal district court for the District of Columbia, that no test or device had been used to deprive anyone of the right to vote during that period. See 42 U.S.C. § 1973b. Since the Act itself suspended those tests or devices for only five years, it was thought that it would be relatively simple for states and counties who complied with the suspension to bail out after the 5-year period. In 1970, the time period was extended to 10 years; in 1975, it was extended to 17 years. In 1982, the approach changed to terminate the special coverage at the end of 25 years following the effective date of the 1982 amendments. See 42 U.S.C. § 1973b(a)(9). In 1982, the bail-out provisions were amended substantially to allow individual counties within a fully covered state to bail out and to set out a number of specific qualifications that a jurisdiction needs to meet in order to bail out. See 42 U.S.C. § 1973b(b)(1)-(3).

[FN25]. 42 U.S.C. § 1973d.

[FN26]. 47 U.S.C. § 1973e.

[FN27]. The examiners are commonly referred to as federal registrars. These were people appointed by the head of the Civil Service Commission, now the Office of Personnel Management, to examine voter applicants as to their qualifications under those portions of state law that were valid under the U.S. Constitution and laws. If the applicants satisfied the state requirements, their names were put on a list that was given to the county registrar, who then had to add them to the county voter registration rolls. In this way, some semblance of state authority over the voter registration process was preserved: registrants satisfied state requirements and a state-authorized official put the voters' names on the rolls. To safeguard against discriminatory purges of those newly enfranchised voters, their names cannot be purged from the voter rolls without the approval of the Office of Personnel Management. 42 U.S.C. § 1973c(b)(4).

[FN28]. See Appendix A for the number of people, by state, registered by federal examiners.

[FN29]. 42 U.S.C. § 1973f. The Act originally named the Director of the Civil Service Commission, which later became the Office of Personnel Management.

[FN30]. *Id.*

[FN31]. 42 U.S.C. § 1973(c). Since the federal examiner and federal observer provisions of the Voting Rights Act focus on political subdivisions, which ordinarily are counties, a county must be certified for federal examiners even if the object is to assign federal observers to monitor polling places during a city or other election, such as a school board election, within the

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county. See 42 U.S.C. § 1973d-1(c)(2).

[FN32]. See Appendix B, Assignment of Federal Observers Under Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f, by Year and State. There were 4,698 federal observers assigned to polling places in five states from 1966 through 1969; 7,034 federal observers were assigned to nine states in the 1970s; 6,598 federal observers were assigned to 11 states in the 1980s, and 3,753 federal observers were assigned to 13 states in the 1990s. In 2000, 640 federal observers were assigned to 11 states.

[FN33]. U.S. v. Conecuh County, No. 83-1201-H (S.D. Ala. June 12, 1984). The federal observers' reports are not public documents, so there are very few examples on the public record of the facts that the observers have witnessed. One such public document is the Plaintiff's Response to Interrogatories and Request for Production of Documents in Conecuh County. Some of the specific examples of the kind of discriminatory treatment that was afforded African-American voters described in the text that follows are taken from the excerpts of the Conecuh County responses at Appendix C, while others are based on the author's first-hand knowledge.

[FN34]. Pl. Resp. to Interrog. & Req. for Prod. of Doc. at 6, Conecuh County, No. 83-1201-H.

[FN35]. . . It was claimed by white officials that the sample ballots were campaign material which was prohibited inside the polls.

[FN36]. After the Voting Rights Act enabled African-Americans in the deep south to register to vote, it became common for civil rights workers and local African-American residents to drive the new voters to the polls and to give assistance to those who needed it. This was a natural outgrowth of the organizing required during the civil rights movement to achieve voter registration for black people. It provided transportation—many people did not have cars—and gave confidence and protection to these newly enfranchised voters at the polling places from which they had so recently been excluded by white poll workers and voters who did not want them there. This tradition of "hauling" voters to the polls and giving assistance to voters who need it continues today, especially in many rural areas.

[FN37]. U.S. v. City of Hamtramck, No. 00-73541 (E.D. Mich. Aug. 7, 2000).

[FN38]. *Id.*, slip op. at 4.

[FN39]. 42 U.S.C. § 1973b(f)(3).

[FN40]. *Id.* at § 1973(c)(3).

[FN41]. *Id.* at § 1973(c)(2). The jurisdictions subject to the special provisions of the Voting Rights Act are listed in the Appendix to 28 U.S.C. Part 51.

[FN42]. 42 U.S.C. § 1973b(f)(4). A parallel requirement was added in Section 203 of the Voting Rights Act in 1975 for counties determined by different formula. 42 U.S.C. § 1973aa-1a. Section 203 of the Act does not include the other special provisions of Section 4, such as the preclearance, federal examiner and federal observer provisions. Lawsuits under Section 203 must be brought before a three-judge court. As a result of amendments since 1975, coverage under Section 203 now applies to counties that have more than 5 percent of voting age citizens who are members of a single language minority and are limited-English proficient; have more than 10,000 voting age citizens who are members of a single language minority and are limited-English proficient; or have a part of an Indian reservation, and more than 5 percent of the American Indian or Alaska Native voting age citizens are members of a single language minority and are limited-English proficient; and the literacy rate of the language minority group citizens is higher than the national illiteracy rate. 42 U.S.C. § 1973aa-1(a)(2). The counties covered under the language minority provisions of Sections 4 and 203 are listed in the Appendix to 28 U.S.C. Part 55.

[FN43]. Counties in Arizona, New York and Texas were certified by the U.S. Attorney General. Counties in California, New Mexico and Utah were certified by federal district courts under Section 3(c) of the Act, 42 U.S.C. § 1973a(c). Section 3(c) provides for certification in a lawsuit brought "under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment... (1) as part of any interlocutory order... or (2) as part of any final judgment if the court finds that violations of the

fourteenth or fifteenth amendment justifying equitable relief have occurred..."

[FN44]. From 1990 through 2000, there were 2,449 federal observers assigned to elections in the states of the Deep South, very few of which involved discrimination against language minority group members, and there were 2,215 federal observers assigned to monitor elections in other areas of the country, most of which involved discrimination against language minority group members. See Appendix B.

[FN45]. Mail addressed to streets using the Spanish nickname was delivered because the postal personnel were familiar with the local Spanish language usages, as the poll workers were not.

[FN46]. Anglo candidates compiled lists of Hispanic voters' names for their poll watchers to challenge at the polls on the ground that the voters were not citizens. United States citizenship is required by every state as a qualification to register to vote in state and federal elections. But in order to avoid discriminatory treatment of voters at the polls and disrupting the polling places with election-day challenges, persons who, before an election, have evidence that a registered voter is not a U.S. citizen should be required to present that information to the voter registrar, and to desist from interposing challenges at the polls to voters whose qualifications have been upheld by the registrar.

[FN47]. U.S. v. Passaic City, No. 99-2544, Order Appointing an Independent Election Monitor in Passaic County (D.N.J. Sept. 6, 2000)(three-judge court).

[FN48]. *Id.* (citing Walter F. Timponc, Office of the Election Monitor, Fifth Report, June 15, 2001, 3-4).

[FN49]. U.S. v. Passaic City, No. 99-2544 (citing Timponc supra n. 48 at 6-7).

[FN50]. U.S. v. Alameda County, No. C95 1266, slip op. at 4 (N.D. Cal. Jan. 22, 1996).

[FN51]. U.S. v. Cibola County, No. 93 1134 (D.N.M. Apr. 21, 1994).

[FN52]. *Id.*

[FN53]. Trujillo v. Garley, C.A. No. 1350 (D.N.M. August 11, 1948).

[FN54]. Sanchez v. King, C.A. No. 82-0067-M (D.N.M. 1984).

[FN55]. Cibola County, No. 93 1134, slip op. at 5-7.

[FN56]. Residences on the Navajo reservation often are miles apart, with no paved roads, and many homes have no telephones. It is not unusual for reservation residents to pick up their mail periodically at a store or other place far from their homes.

[FN57]. Voters were confused because they voted in tribal elections without problem, and were not told, for example, that under state law they had been purged from the county voter rolls because they did not vote with some particular frequency and in particular elections, such as every two or four years in general elections. To add to the confusion, in many areas the tribal elections and the state elections were held on different dates but at the same locations. Prior to the National Voter Registration Act, 42 U.S.C. § 1973gg et seq., voter registration in many counties in Indian country was conducted only in the county seat, far from reservation housing, until, in some instances, litigation required that deputy registrars be made available at reservation sites, and that voter purge procedures be modified to allow fair notice to Native-American voters. U.S. v. Arizona, No. 88-1989 slip op. at 6-11 (D. Ariz. filed May 22, 1989); First Amended Consent Decree, 5-10 (Jan. 3, 1994).

[FN58]. Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina and Texas are fully covered under the Voting Rights Act's special provisions by the formula in Section 4 of the Act, 42 U.S.C. § 1973b. One or more counties are specially covered under Section 4 in California, Florida, Michigan, New Hampshire, New York, North Carolina, South Dakota and Virginia. All jurisdictions covered under Section 4 of the Act are listed in the Appendix to 28 CFR Part 55.

[FN59]. Certification under Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973b(a), is for a particular term as defined

by the court. Certification by the U.S. Attorney General under Section 6 of the Voting Rights Act, 42 U.S.C. § 1973f, is for an unlimited time. Jurisdictions certified under Section 6 can seek to have their certification terminated under Section 13 of the Voting Rights Act, 42 U.S.C. § 1973j. Appendix D is a list of the jurisdictions that have been certified for examiners by court order under Section 3(a) of the Act.

[FN60]. The Voting Section is headed by a chief and four deputy chiefs. There also are special counsels who are senior attorneys assigned to perform particular duties. The pre-election work for a particular jurisdiction usually is overseen by a deputy chief if the jurisdiction is a defendant in recent litigation. Otherwise, the pre-election supervision is handled by the special litigation counsel for elections.

[FN61]. Federal observers are assigned and supervised by the Office of Personnel Management. See 42 U.S.C. § 1973i. OPM centralized the observer program in the OPM office in Atlanta, Georgia, over the past several years. Beginning in 2002 the program was centralized in the OPM office in Denver, Colorado.

There is no standing group of people who are federal observers. Rather, the people chosen to serve as federal observers at a particular election are volunteers, usually from among the OPM nationwide staff except when special abilities are required, such as Native-American language ability. General training sessions are held for observers and observer supervisors at selected sites during the year. Often people will volunteer to serve as observers in election after election, but they are not always available for every election because of the demands of their regular work assignments and prior obligations. Because of the need to recruit observers for each election, and the logistical requirements of transportation (airplane tickets, rental cars) and lodging, the OPM coordinator and the Voting Section supervising attorney are in contact throughout the year to discuss observer needs in upcoming elections.

[FN62]. If a county for which federal observers is recommended has not been certified yet for federal examiners, a separate certification of the county by the U.S. Attorney General is necessary. Certifications are effective upon publication in the Federal Register, 42 U.S.C. § 1973b(b). OPM must publish in the Federal Register a location for an examiner's office. 42 U.S.C. § 1973(a).

[FN63]. In addition, the DOJ attorney in each county calls the supervising attorney often during the day: when the polls open, and every hour after that until it is clear that correct procedures are being followed at the polls in that county, unless continuing problems and their resolution make it necessary to continue frequent contact. This coordination between the supervising attorney and the attorney in the field begins on the day before the election, and does not end until the attorney leaves the county on the day after the election or later.

[FN64]. Initial facts indicating possible violations of the Voting Rights Act most often come to DOJ through complaints by telephone, by mail, or in conversation with DOJ attorneys, paralegals and analysts in the performance of their routine duties.

[FN65]. The federal observers assigned to a particular polling place speak the minority language that is used by the voters at that polling place.

[FN66]. 42 U.S.C. § 1973f.

[FN67]. U.S. v. Consock County, No. 83-1201, slip op. at 3-4 (S.D. Ala. Jan. 16, 1984).

[FN68]. *Id.* at 3-4.

[FN69]. *Id.* at 4.

[FN70]. U.S. v. Johnson County, No. 393-45, slip op. at 2-3 (S.D. Ga. filed Sept. 14, 1993).

[FN71]. *Id.* at 6.

[FN72]. This change in practice was reviewed and precleared under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

[FN73]. 42 U.S.C. § 1973aa-1a

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[FN74]. See *U.S. v. Socorro County*, No. 93-1244 (D.N.M. filed Apr. 13, 1994); *U.S. v. Sandoval County*, No. 88-1457 (D.N.M. filed June 10, 1993); *U.S. v. San Juan County*, No. C-83-1287, First Amended Settlement and Order (D. Utah filed Aug. 24, 1990); *U.S. v. McKinley County*, No. 86-0028-M, First Amended Consent Decree and Order (D.N.M. Jul. 20, 1990); Arizona, No. 88-1989, First Amended Consent Decree in that case (Jan. 3, 1994).

[FN75]. Cibola County, No. 93-1134.

[FN76]. A letter of understanding was developed between DOJ and San Juan County, New Mexico, which required the county to adopt a manual of procedures to comply with the language minority requirements of the Voting Rights Act. The manual would become final after review and concurrence by DOJ. Changes in the procedures would become effective upon the concurrence of DOJ. Letters of understanding have not been widely used by DOJ in its Voting Rights Act enforcement. The letters have the advantage of getting a fast remedy and avoiding the uncertainties of litigation. The main disadvantage of using a letter of understanding is the inability to seek contempt of court sanctions if the county does not follow the steps in the letter or the county's manual of procedures. If the actions that the county fails to take are significant, a legal action would need to be filed at that time, prolonging the time for obtaining a remedy.

[FN77]. *U.S. v. Bernalillo County*, No. CV-98-156 (D.N.M. Apr. 27, 1998).

[FN78]. *Id.*, slip op. at 4.

[FN79]. *Id.*

[FN80]. 42 U.S.C. § 1973a(c).

[FN81]. *Id.*, slip op. at 6.

[FN82]. *N.Y. Election L. § 8-500 (McKinney 2001)*.

[FN83]. *Utah Code Ann. § 20A-3-201 (2001)*.

[FN84]. See Appendix G.

[FN85]. See e.g. the following states in which violation of laws against voter intimidation or interference are punished as felonies under state law: *Cal. Election Code § 18550* (West 2002) ("felony punishable by imprisonment in the state prison for 16 months or two or three years"); *Conn. Gen. Stat. § 9-366 (2002)* ("shall be imprisoned not more than five years"); *Ind. Code Ann. § 3-14-3-A* (West 2001) ("commits a Class D felony"); *Ky. Rev. Stat. Ann. § 119.155 (2001)* ("shall be guilty of a Class D felony"); *N.M. Stat. Ann. § 1-70-14 (2001)* ("Whoever commits intimidation is guilty of a fourth degree felony"); 25 Pa. Consol. Stat. § 3527 (West 2001) ("shall be guilty of a felony of the third degree").

[FN86]. *Tenn. Code Ann. § 2-3-108*. "The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to prevent undue influence or intimidation of the free and fair expression of the will of the electors." *Tenn. Code Ann. § 2-3-108*.

[FN87]. "Whoever, being a duly qualified elector of this State according to the Constitution and laws thereof, is prevented from voting, or obstructed in his or her effort to vote at any election, by reason of any interference by any person or persons, or military power, or other power, exercising or attempting to exercise force, intimidation or threats, or requiring any qualifications or conditions unknown to such Constitution and laws, shall be deemed and taken to have suffered private damage and injury, and shall have civil remedy thereof, in the court of this State, by civil action against every person who promoted such interference, whether by active participation, or by advising, counseling, or in anywise encouraging the same." *Del. Code Ann. Tit. 15, § 5303 (2001)*.

[FN88]. *Neb. Rev. Stat. § 32-910 (2001)* ("Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place building and shall arrest any person obstructing such passageways."); *Wash. Rev. Code Ann. § 29.51.020* (West 2002) ("Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction,

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and may arrest any person creating such obstruction").

[FN89]. "Managers of election are clothed with such police powers as may be necessary to carry out the provisions of this article. The managers shall possess full authority to maintain good order at the polls and to enforce obedience to their lawful commands during an election and during the canvass and counting of the votes. All peace officers shall answer all such calls for help in preserving the peace as may be made by the managers of election." *S.C. Code Ann. § 7-13-140 (2001)*.

[FN90]. "It shall be unlawful for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot. The officers of election may order a person violating this subsection to cease such action. If such person does not promptly desist, the officers of election, or a majority of them, may order the arrest of such person by any person authorized by law to make arrests, and, by their warrant, may commit him to the county or city jail, as the case may be, for a period not exceeding twenty-four hours." *Va. Code Ann. § 24.2-607 (2002)*.

[FN91]. "The municipal clerk and election inspectors shall prevent interference with and distraction of electors at polling places." *Wis. Stat. § 5.35 (2001)*.

[FN92]. 10 Ill. Comp. Stat. 5/1A-8 (2001).

[FN93]. *Ga. Code Ann. § 21-2-31 (2000)*.

[FN94]. 25 Pa. Consol. Stat. § 3047 (2001).

[FN95]. *S.C. Code Ann. § 7-13-160 (2001)*.

[FN96]. See e.g. *Fla. Stat. § 104.0515 (2001)* ("whether acting under color of law or otherwise").

[FN97]. See Caltech/MIT Voting Tech. Program, July 2001 Report: Voting—What Is, What Could Be, (July 2001)(available at <[http://web.mit.edu/news/office/nr/2001/VTP\\_report\\_all.pdf](http://web.mit.edu/news/office/nr/2001/VTP_report_all.pdf)>); The Consts. Project's Forum on Election Reform, Bldg. Consensus on Election Reform, Aug. 2001 (available at <<http://www.constitutionproject.org/eri/CP%20Report.pdf>>); The Election Ctr., Natl. Task Force Rpt. on Election Reform, Election 2000: Review and Recommendations by The Nation's Elections Adminstrs. (July 2001)(available at <<http://www.electioncenter.org/electionreformreport/COMPLETE%20Final%20Report.htm>>); The Fla. Sen., Comm. on Ethics and Elections, Rev. of the Voting Irregularities of the 2000 Pres. Election (Mar. 2001)(available at <[http://199.44.254.194/data/Publications/2001/Senate/reports/interim\\_reports/pd/2001-2010eLONG.PDF](http://199.44.254.194/data/Publications/2001/Senate/reports/interim_reports/pd/2001-2010eLONG.PDF)>); Election Reform Info. Project, What's Changed, What Hasn't, and Why?, Election Reform Since Nov. 2000 (October 22, 2001)(available at <[http://www.electionline.org/site/docs/pdf/electionline\\_report.10.22.2001.pdf](http://www.electionline.org/site/docs/pdf/electionline_report.10.22.2001.pdf)>); The Gov.'s Select Task Force on Election Procs., Stands and Tech., Revitalizing Democracy in Fla. (Mar. 1, 2001)(available at <[http://www.colinscenter.org/user\\_doc/Revitalizing\\_Democracy&uscore.in\\_Florida.pdf](http://www.colinscenter.org/user_doc/Revitalizing_Democracy&uscore.in_Florida.pdf)>); U.S. Comm. on Civil Rights, Voting Irregularities in Florida During the 2000 Presidential Election, (June 2001)(available at <<http://www.usccr.gov/pubs/vote2000/report/main.htm>>); U.S. Comm. on Civil Rights, The Florida Election Report: Dissenting Statement by Commr. Abigail Thernstrom and Commr. Russell G. Redenbaugh (July 19, 2001)(available at <<http://www.usccr.gov/pubs/vote2000/report/appendix/dissent.htm>>); Natl. Assn. of Secs. of State, Election Reform: State by State Best Practices Rpt. (Aug. 1, 2001) (available at <<[http://www.nass.org/reports/reform\\_report.htm](http://www.nass.org/reports/reform_report.htm)>>); Natl. Comm. on Election Stands and Reform, Rpt. and Recommendations to Improve Am's Election System, (May 2001)(available at <<http://www.naco.org/programs/infotech/elections/election.pdf>>); The Natl. Comm. on Fed. Election Reform, To Assure Pride and Confidence in the Electoral Process (August 2001)(available at <[http://www.reformelections.org/data/task\\_03\\_03\\_reports/full&uscore;rl\\_report.pdf](http://www.reformelections.org/data/task_03_03_reports/full&uscore;rl_report.pdf)>); Natl. Conf. of State Legis., Voting in Am.: Final Rpt. of the NCSL Elections Reform Task Force (August 2001)(available at <<http://www.ncsl.org/programs/press/2001/electref0801.htm>>); Joseph K. Pika, The 2000 Del. Sen. Race, PS: Pol. Sci. and Pol. (June, 2001)(available at <<http://www.apsanet.org/PS/june01/pika.cfm>>); U.S. General Acc'y. Off., Report to the Cong., Elections, The Scope of Congressional Authority in Election Administration, (March 2001)(available at <<http://www.gao.gov/new.items/d01470.pdf>>); U.S. General Acc'y. Off., Testimony Before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, Issues Affecting Military and Overseas Absentee Voters, (May 2001) (available at <[http://www.secstate.wa.gov/elections/pdf/gao\\_report.pdf](http://www.secstate.wa.gov/elections/pdf/gao_report.pdf)>).

[FN98]. There are some instances in which parties have become aware of election day irregularities which are brought to the attention of the Department of Justice on election day, such as possible violations of outstanding consent decrees.

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[FN99]. Of course, the parties continue to monitor and observe recounts.

[FN100]. The information regarding these allegations comes from the author's personal knowledge, serving as counsel for the Gore/Lieberman campaign. Many of the allegations are similar to those reported to the numerous organizations that conducted reviews of election day 2000.

[FN101]. *Missouri ex. rel. Bush-Cheney 2000, Inc., Relators v. Honorable Evelyn M. Baker*, 34 S.W.3d 410 (Mo. App. 2000).

[FN102]. See U.S. Comm. on Civil Rights, *Voting Irregularities in Fla. During the 2000 Pres. Election*, supra n. 88 at chapter 2.

[FN103]. *U.S. v. Florida*, No. TCA-80-1055 (N.D. Fla. 1982).

[FN104]. Historically, very close elections have usually happened where the electorate was very small. There have been recounts in many races at the State and local level in such close races—some of which involved reviews of disqualified ballots. What was unprecedented in 2000 was the realization that the Presidential contest could be so close that disqualified ballots could make the difference.

[FN105]. *Bush v. Gore*, 531 U.S. 98 (2000).

[FN106]. *Id.* at 104-105.

[FN107]. *Id.* at 109.

[FN108]. *Id.*

[FN109]. The U.S. Attorney General has no cease and desist power in this area. Remedies for discriminatory actions at the polls must be sought in lawsuits in federal district court.

[FN110]. Cf. Sections 3(a), 3(b) and 3(c) of the Voting Rights Act of 1965, Publ. No. 89-110 (Aug 6, 1965), with Sections 3(a), 3(b) and 3(c) of the Voting Rights Act Amendments of 1975, Publ. No. 94-73 (Aug 6, 1975).

[FN111]. It is noted that all reform is not costly. Less expensive changes include clarification of standards and rules governing the conduct of elections and the counting of votes.

[FN112]. This information is extracted from the Semiannual Report of Cumulative Totals on Voting Rights Examining as of December 31, 2000. Prepared by the Office of Workforce Information, Office of Merit Systems Oversight and Effectiveness, U.S. Office of Personnel Management, Washington, D.C. 20415.

[FN113]. People were listed in Autauga, Dallas, Elmore, Greene, Hale, Jefferson, Lowndes, Marengo, Montgomery, Perry, Sumter, and Wilcox Counties.

[FN114]. People were listed in Butts, Lee, Scriven, and Terrell Counties.

[FN115]. People were listed in Bossier, Caddo, DeSoto, East Carroll, East Feliciana, Madison, Ouachita, Plaquemins, and West Feliciana Parishes.

[FN116]. People were listed in Amite, Benton, Bolivar, Carroll, Claiborne, Clay, Coahoma, DeSoto, Forrest, Franklin, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jasper, Jefferson, Jefferson Davis, Jones, LeFlore, Madison, Marshall, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Quitman, Rankin, Sharkey, Simpson, Sunflower, Tallahatchie, Walthall, Warren, Wilkinson, and Winston Counties.

[FN117]. People were listed in Clarendon and Dorchester Counties.

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FN119. This information is extracted from the summary of federal observer activity by calendar year, United States Department of Justice, Civil Rights Division, Voting Section. Southern states are listed first in this chart because federal observers were assigned only to Southern states for the first years shown.

FN120. U.S. v. Conecuh County, No. 83-1201-H (S.D. Ala. Filed Jun. 12, 1984).

FN121. Id. at 7.

FN122. Id. at 8-9.

FN123. Id. at 16-17.

FN124. Id. at 21.

FN125. Id. at 24.

FN126. Id. at 35.

FN127. Id. at 36-37.

FN128. Id. at 40.

FN129. Information obtained from Jurisdictions Currently Eligible for Federal Observers as a Result of Orders Under Section 3(c) of the Voting Rights Act, United States Department of Justice, Civil Rights Division, Voting Section, October 22, 2001.

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PREPARED STATEMENT OF THE HONORABLE BRADLEY J. SCHLOZMAN, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, CONCERNING THE VOTING RIGHTS ACT: SECTIONS 6 AND 8, FEDERAL EXAMINER AND OBSERVER PROGRAMS

Chairman Chabot, Ranking Member Nadler, distinguished members of the Subcommittee:

I am Bradley Schlozman, the Principal Deputy Assistant Attorney General of the Civil Rights Division at the Department of Justice. As I have underscored in previous testimony before this Subcommittee, the President has directed the full power and might of the Justice Department to enforcing the Voting Rights Act and preserving the integrity of our voting process. This Administration looks forward to working with Congress on the reauthorization of this important legislation.

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It is my privilege today to provide you with an overview of the Justice Department's use of sections 6 and 8 of the Voting Rights Act,<sup>1</sup> which pertain to Federal examiners and Federal observers. As you know, these provisions, like section 5,<sup>2</sup> are slated to expire in August 2007.

#### FEDERAL EXAMINERS

Let me begin by explaining what "federal examiners" are within the meaning of the Voting Rights Act. Federal examiners are essentially officials assigned to a particular political subdivision to whom certain complaints of voting discrimination can be made. Governed by section 6 of the Act, the authority to appoint Federal examiners was first designed as a congressional response to the racially discriminatory voter registration practices that existed throughout the South at the time of the Act's original passage in 1965. Examiners are charged with processing (or "examining") applicants for voter registration and making a list of those applicants who meet State eligibility rules; the list is then given to the local county registrar, who is required to put those names on the county's voter registration rolls. Those on the examiner's list are commonly called "federally registered voters." The Voting Rights Act also requires the examiners to be available during each of the jurisdiction's elections, and for two days afterward, to take complaints from any federally registered voter claiming that he/she had not been allowed to vote.

Federal examiners can be appointed in two separate ways. The first route is through section 6's empowerment of the Attorney General to "certify" for the appointment of Federal examiners any jurisdiction falling within the coverage of the Voting Rights Act in which there is reason to believe that voters have been denied the right to vote on account of their race or status as a language minority. In particular, the Attorney General must certify that either: (i) he has received complaints in writing from twenty or more residents alleging that they have been denied the right to vote under color of law on account of race or color or because they are a member of a language minority and he believes such complaints to be meritorious; or (ii) in his judgment, the appointment of examiners is necessary to enforce the guarantees of the 14th or 15th Amendments. The second method by which Federal examiners may be appointed is for a Federal court to do so pursuant to section 3(a) as part of an order of equitable relief in a voting rights lawsuit to remedy violations of the 14th or 15th Amendment. Judicial certifications, unlike those of the Attorney General, are not restricted to those political subdivisions covered by section 4 of the Voting Rights Act. Regardless of who makes the formal certification, once the determination is made, the actual selection of the examiner is undertaken by the Director of the Office of Personnel Management (OPM), who then oversees the examiner's activities.

The Voting Rights Act's ban on literacy tests and other discriminatory practices has mitigated many of the voter registration problems that made examiners so important. As a result, the need for, and role of, Federal examiners has greatly diminished over time. Although there are still 148 counties and parishes in 9 States that the Attorney General has certified for Federal examiners,<sup>3</sup> nearly all of these certifications were certified shortly after the Voting Rights Act was passed in 1965 when conditions were radically different from today.<sup>4</sup> Moreover, many of the counties/parishes have not been the source of any race-based voting registration complaints for decades.

According to OPM, there have been no new "federally registered voters" (*i.e.*, voters registered by Federal examiners) added in any jurisdiction throughout the country since 1983. Nor has the Department of Justice received any complaints about covered jurisdictions refusing to register Federal voters in decades.

In addition to the great advances in minority access to the franchise today as compared to 30–40 years ago, the decline in registration-related complaints is also attributable to the passage of the National Voter Registration Act of 1993 (NVRA), which made voter registration dramatically more accessible.<sup>5</sup> Prior to this 1993 Act,

<sup>1</sup> 42 U.S.C. 1973d, 1973f.

<sup>2</sup> 42 U.S.C. 1973c.

<sup>3</sup> There are also 19 political subdivisions in 12 States currently certified by court order. With two exceptions, all of these certifications pertain to language-minority issues. An additional 14 jurisdictions in eight States previously were certified for Federal examiners by Federal courts under section 3(a), but the designations have since expired.

<sup>4</sup> The complete list of counties certified by the Attorney General, along with dates of certification, can be found on the website of the Department of Justice's Voting Section. See <http://www.usdoj.gov/crt/voting/examine/activ-exam.htm>.

<sup>5</sup> 42 U.S.C. 1973gg *et seq.*

there were few Federal standards for voter registration. Through the NVRA, however, Congress established specific, uniform requirements for voter registration and State maintenance of voter registration lists. All of these requirements are applicable across the United States, not just in those jurisdictions certified for Federal examiners or otherwise covered by the Voting Rights Act. The reality today is that the only real importance of the Federal examiner provision from a practical standpoint is its function as a statutory prerequisite to the Attorney General's ability to call upon OPM to assign Federal observers to monitor particular elections in certified jurisdictions.

#### FEDERAL OBSERVERS

At any time after a Federal examiner has been appointed to a particular jurisdiction, the Attorney General may request under section 8 that the Director of OPM assign Federal observers to monitor elections in that jurisdiction.<sup>6</sup> These observers are Federal employees who are recruited and supervised by OPM. They are authorized by statute to enter polling places and vote-tabulation rooms in order to observe whether eligible voters are being permitted to vote and whether votes cast by eligible voters are being properly counted.

The OPM observers work in conjunction with attorneys from the Justice Department's Civil Rights Division. Department of Justice attorneys assist OPM with the observers' training,

brief the observers on relevant issues prior to the election, and work closely with them on election day. Federal observers are instructed to watch, listen, and take careful notes of everything that happens inside the polling place/vote-tabulation room during an election. They are also trained not to interfere with the election in any way. After the election, Justice Department attorneys debrief the observers, and the observers usually complete written reports on their observations. These reports are sent on to the Civil Rights Division and can be used in court if necessary.

Most Federal observers dispatched to cover elections find no irregularities. Still, problems occur. Over at least the last decade, most of these have related to compliance with the language minority requirements of section 203.<sup>7</sup> Where problems are discovered, a variety of actions may be taken depending on the relevant circumstances. On occasion, Justice Department personnel will assess the situation and work with county/parish officials on election day to clarify Federal legal requirements and immediately resolve the identified problem. Other times, the Department will send a letter to the jurisdiction following the election in which we identify certain incidents or practices that should be addressed or improved in the future (e.g., removal of certain poll workers, additional training for election-day officials, etc.). Department attorneys likewise may recommend further investigation. If no Federal issues are identified, the matter may be referred to State authorities. If necessary, the Department will commence a civil action (or contempt motion if applicable) to enforce the protections of the Voting Rights Act.

Notwithstanding the general overall compliance with the Voting Rights Act, the Department of Justice has taken full advantage of the Federal observer provisions to help avoid slippage or complacency by covered jurisdictions. In 2004, for example, the Civil Rights Division worked with OPM to send 1,463 observers to cover 55 elections in 30 jurisdictions in 10 different States. Meanwhile, already in 2005, Federal observers have been dispatched to 21 elections in 17 jurisdictions in 10 different States.

In areas of the country where Federal observers cannot be sent, the Civil Rights Division will send its own staff lawyers to monitor elections if it has received complaints or has uncovered credible evidence of possible violations of the Voting Rights Act. In fact, the great bulk of our recent enforcement cases since, say, 1993, have involved jurisdictions (e.g., Massachusetts, California, New York, New Jersey, Florida, Washington, and Pennsylvania) where there is no statutory authority to send Federal observers. We have expended substantial resources in this endeavor. For example, in 2004, the Department of Justice sent 533 departmental personnel to monitor 108 elections in 80 jurisdictions in 27 different States. So far in 2005, the Department has sent 186 personnel to cover 24 elections in 21 jurisdictions in 9 different States. Those monitors helped account for the record-setting work we have done in enforcing the Voting Rights Act in recent years.

As I have said before to this Subcommittee, the Civil Rights Division has made the vigorous enforcement of voting rights a primary objective, and we have been very successful in doing so. Our election monitoring and observer coverage is just

<sup>6</sup> 42 U.S.C. 1973f.

<sup>7</sup> 42 U.S.C. 1973aa-1a.

one small part of that effort. I thank the committee for the opportunity to submit this statement.

INSERTED INTO THE RECORD BY CONGRESSMAN WATT DURING THE HEARING: LETTER FROM WILLIAM JENKINS, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE, TO THE HONORABLES JOSEPH LIEBERMAN, HENRY WAZMAN, AND JOHN CONYERS, JR. REGARDING THE DEPARTMENT OF JUSTICE'S ACTIVITIES TO ADDRESS PAST ELECTION-RELATED VOTING IRREGULARITIES



September 14, 2004

The Honorable Joseph I. Lieberman  
Ranking Minority Member  
Committee on Governmental Affairs  
United States Senate

The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives

The Honorable John Conyers, Jr.  
Ranking Minority Member  
Committee on the Judiciary  
House of Representatives

*Subject: Department of Justice's Activities to Address Past Election-Related Voting Irregularities*

Election-day problems in Florida and elsewhere in November 2000 raised concerns about voting systems that included, among other things, alleged voting irregularities that may have affected voter access to the polls. The term voting irregularities generally refers to a broad array of complaints relating to voting and/or elections that may involve violations of federal voting rights and/or federal criminal law for which the Department of Justice (DOJ) has enforcement responsibilities.

You requested that we review activities at DOJ to help ensure voter access to the polls and actions to address allegations of voting irregularities. This report (1) identifies and describes changes DOJ has made since November 2000 to help ensure voter access to the polls; (2) identifies and describes actions that the Voting Section in DOJ's Civil Rights Division has taken to track, address, and assess allegations of election-related voting irregularities received between November 2000 and December 2003; and (3) assesses the Voting Section's internal control<sup>1</sup> activities

<sup>1</sup>Election-related refers to a preliminary investigation, matter, or case that the Voting Section initiated based on allegations about a specific election. A matter is an activity that has been assigned an identification number but has not resulted in a court filing of a complaint, indictment, or information. A case is an activity that has been assigned the same identification number that it had as a matter and has resulted in the court filing of a complaint, indictment, or information.

<sup>2</sup>Internal controls are integral components of an organization's management that provide reasonable assurance of objectives that include, among other things, efficient operations. They comprise the plans, methods, and procedures used to meet missions, goals, and objectives and, in doing so, support performance-based management. For additional information on internal controls, see GAO *Internal Control: Standards for Internal Control in the Federal Government*, AIMD-00-213.1 (Washington, D.C.: November 1, 1999).

to help ensure relevant, accurate, and reliable recording and documentation of allegations of voting irregularities to accurately track actions taken in response to allegations and provide accurate and complete information to the public and congressional committees.

We primarily performed our work at DOJ's Civil Rights Division, Voting Section. We obtained relevant documentation and interviewed responsible officials regarding DOJ's activities to help ensure voter access to the polls. To identify and describe changes made since November 2000, we reviewed documentation on DOJ's efforts to monitor and observe elections, increase emphasis on enforcement of minority language and overseas voters' rights, disseminate election-related guidance, and increase its resources to address voting issues. To identify and describe actions that the Voting Section took to track, address, and assess allegations of voting irregularities, we reviewed telephone logs and 34 files with information on a preliminary investigation, matters, and cases that the Voting Section considered to be election-related voting irregularities initiated from November 2000 to December 2003. To assess the Voting Section's internal controls, we obtained available documentation of policies, procedures, and techniques the Voting Section has to manage allegations of voting irregularities and considered them in relation to GAO's internal control standards. We also interviewed officials and obtained documentation from DOJ's Criminal Division, Public Integrity Section (PIN), in relation to the coordination between the Voting Section and PIN to address voter access to the polls.

On August 31, 2004, we provided your staffs a briefing document on the results of our work. Enclosure I contains the materials we presented at that time. Our audit work was performed in Washington, D.C., from May 2003 through August 2004 in accordance with generally accepted government auditing standards.

#### **Background**

The Voting Section in the Civil Rights Division is charged with the responsibility of enforcing federal voting rights statutes that are designed to safeguard the right to vote of racial and language minorities; disabled, elderly, and illiterate persons; and military and overseas voters, among others. The Voting Section is also charged with the responsibility of enforcing federal statutes that, among other things, address issues such as voter registration, provisional voting, and voter information. Provisional voting permits eligible persons to vote on election day if their names are not on voter registration lists, with the understanding that each person's eligibility will be verified after the election and their votes counted, if eligible. (See enc. I, and attach. I, for more information on statutes that the Voting Section enforces.)

The Voting Section, among other things, monitors election-day activities to ensure voting rights are protected and initiates investigations and opens matters—an activity that has not resulted in a court filing of a complaint, indictment, or information—to examine allegations of voting irregularities that fall within the jurisdiction of the Civil Rights Division. If warranted, a matter may culminate in a case—an activity that has resulted in the filing of a complaint, indictment, or information with a federal court.

The Voting Section also may initiate matters to monitor private lawsuits. Voting Section attorneys are generally responsible for conducting investigations and prosecuting cases.

The Voting Section also coordinates with PIN to refer allegations the Voting Section receives that involve violations of criminal statutes related to voting fraud. For example, in relation to the 2002 federal election, the Voting Section referred three matters deemed to be potential violations of criminal laws to PIN, which assumed responsibility for the investigations. In addition, the Voting Section and PIN have provided joint training to Assistant U.S. Attorneys, with the Voting Section presenting information about civil rights statutes that are to protect the right to vote and PIN presenting information about criminal statutes that are to prevent election fraud.

#### Results

Since November 2000, DOJ has implemented changes to help ensure voter access to the polls. The Voting Section emphasized the importance of its monitoring of election-day activities and increased its monitoring of these activities. In 2000, DOJ attorneys and professional staff monitored elections in 5 counties in 5 states. By 2002, the number of election jurisdictions monitored by DOJ attorneys and professional staff increased to 19 counties in 10 states, with monitoring of elections in counties in Florida accounting for the bulk of the increase. The Voting Section also (1) placed a greater priority on protecting the voting rights of language minority voters by helping to ensure that certain covered jurisdictions provided bilingual voting materials for elections; (2) placed a priority on enforcing and preparing for compliance with the federal statute to help ensure voting rights of overseas voters; (3) provided additional training to Assistant U.S. Attorneys on civil rights statutes to educate them about voters' rights; and (4) provided guidance to states regarding the implementation of sections of the Help America Vote Act of 2002 (HAVA) that DOJ enforces.<sup>3</sup> For example, the Voting Section provided guidance to states by issuing a press release that outlined provisions of HAVA that took effect on January 1, 2004, such as provisional voting and identification requirements for new voters who register by mail.

The Attorney General directed the Civil Rights Division to work with civil rights leaders, state and local election officials, and U.S. Attorney Offices prior to election day in an effort to help ensure that citizens' voting rights are protected. The Attorney General also directed the Criminal Division to work with these same groups in helping to preserve ballot integrity and prevent election offenses. Almost all of the U.S. Attorney Offices reported that they had contacted various state or local officials prior to the November 2002 election. Voting Section officials reported that the Assistant Attorney General for the Civil Rights Division and staff from that division met with various civil rights organizations.

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<sup>3</sup> 42 U.S.C. §§ 16301 to 16615.

According to Voting Section officials, DOJ plans to help ensure voter access for the upcoming November 2004 election include increasing its monitoring of elections, coordinating with civil rights organizations, and establishing procedures for bringing the concerns of civil rights organizations about specific issues or jurisdictions to DOJ on or before election day in November 2004. Voting Section officials also said that final decisions as to where monitoring will be conducted are not made public until shortly before an election. (See enc. I for more information.)

The Voting Section has used several means of tracking allegations of voting irregularities and the Section's actions with regard to those allegations. First, the Voting Section used telephone logs to track telephone calls regarding allegations of voting irregularities it received related to the November 2000 and 2002 elections. According to the Voting Section, contractors were hired to help handle the unprecedented number of calls that were received concerning the November 2000 election situation to help ensure that the public would be able to voice opinions and concerns. Second, DOJ tracks matters and cases through its Interactive Case Management (ICM) system—its formal process for tracking and managing work activities. Prior to opening a matter, the Voting Section may make a determination that an allegation does not fall within DOJ's jurisdiction or may initiate a preliminary investigation about an allegation. Third, the Voting Section tracked monitoring of elections using logs and for some election-monitoring activities they opened matters; thus, it has not routinely tracked election-monitoring activities through the ICM system. (See enc. I for more information.)

Actions that Voting Section attorneys took to address allegations of voting irregularities initiated from November 2000 to December 2003 included contacting cognizant election officials at the state and local levels; obtaining data as appropriate; interviewing voters affected by alleged voting irregularities; meeting with minority groups; and assessing the merits of the allegations to determine what, if any, further action was needed. Attorneys in the Voting Section addressed allegations of voting irregularities by first determining whether the allegations were related to violations of federal civil rights statutes and then, if warranted, initiating a preliminary investigation or matter to determine whether an allegation had merit. If warranted, a matter may culminate in a case that is filed with a federal court. We reviewed files for 1 closed preliminary investigation, 25 closed matters, and 8 open and closed cases that the Voting Section considered election-related. The preliminary investigation and 13 matters were closed because they lacked merit. The remaining 12 matters were closed because the state or voting jurisdiction took action to remedy an issue, a state court issued an order addressing the issue, the voting jurisdiction implemented changes for future elections, or Voting Section attorneys provided election officials feedback following the on-site monitoring of elections. Six cases remain open pending fulfillment of consent decrees entered into on behalf of DOJ and the jurisdiction in alleged violation of federal statute, and two cases were closed because states had taken action in response to consent decrees. Enclosure I and attachment IV provide detailed information on actions taken regarding selected matters and cases that the Voting Section considered as involving election-related voting irregularities initiated from November 2000 to December 2003.

Regarding internal controls, we found that the Voting Section did not have a reliable method to consistently record and document telephone calls received alleging voting irregularities. According to Voting Section officials, the number of calls received following the November 2000 election far exceeded the number received in past elections. As a result, the Voting Section used a contractor to assist in handling the telephone calls. To track some of the telephone calls related to the November 2000 election, Voting Section and contractor staff used telephone logs that had several broad categories to capture the subject of the allegation, rows for states from which the calls originated and, for the most part, tabulated the numbers of calls using tick marks. Voting Section staff also kept two other types of logs to record some telephone calls, which included columns to record a caller's name, state, telephone number, and description of the call. Our analysis of the contractor telephone logs found, among other things, that these logs did not include a way to record calls from 4 states—Arkansas, Kansas, Montana, and North Dakota. According to Voting Section officials, these 4 states were left off the contractor logs inadvertently, although these officials noted that they were unaware of any calls received from these states. Our analysis of logs that Voting Section staff completed found that Voting Section staff recorded having received calls from some of these states. The Voting Section improved upon the telephone log for the November 2002 election by having one log that consistently provided for documenting the caller's name, telephone number, and action taken. Compared with the telephone log that contractor staff maintained and one of the three types of logs that Voting Section staff maintained after the November 2000 election, which had several columns to broadly categorize the subject of the telephone calls, the November 2002 log included one column to capture the subject of the telephone calls. The Voting Section plans to take several actions to address voting irregularities for the November 2004 election, including, among other things, using a telephone log similar to the one used for the November 2002 election. The Voting Section did not provide written instructions to contractors for completing the telephone logs related to the 2000 election. However, for the November 2002 federal election, the Voting Section provided instructions to DOJ staff for how to handle calls from citizens, the press, members of Congress, and others. In addition to its method for recording and documenting telephone calls received regarding voting irregularities, we found that the Voting Section did not routinely track its election-monitoring activities through its ICM system. The Voting Section said that it has plans to assign one identification number to track these activities in the future. (See enc. I for more information.)

In conclusion, lack of specifics about allegations and actions limits DOJ's ability to have accurate and clear information to share with the public or Congress about the types of allegations received and actions taken. Predictions of another close presidential election in November 2004 combined with possible voter confusion over new requirements in the Help America Vote Act—such as the implementation of provisional voting in states that had not previously used provisional voting—and possible questions regarding voting equipment could result in the Voting Section again receiving a very large number of telephone calls. This could result in the need to use contractors to record voter allegations because much of the Voting Section staff will be monitoring election sites on election day. It is important that the

information collected be as complete, accurate, and specific as possible regarding specific allegations. If the Voting Section collects more precise information about voter allegations, it is in a better position to assure the public that it has addressed allegations of voting irregularities. Moreover, if it documents actions taken more precisely, it is better able to reassure the public and Congress of its commitment to enforce federal voting rights statutes.

The Voting Section emphasized the importance of its monitoring of election-day activities, but the monitoring program has not been routinely tracked in the Voting Section's ICM system. We believe the significance of this program warrants a more formal tracking of monitoring efforts and resources dedicated to the program to allow for reliable, relevant, and timely information for management decision making and for external reporting purposes.

#### **Recommendations for Executive Action**

Confidence in our election processes is of utmost importance. To help ensure confidence in the integrity of voting processes, the Voting Section plays an important role in addressing voting irregularities. By accurately recording and documenting its activities in as clear a manner as possible, the Voting Section contributes to assuring the public and Congress of the integrity of our voting processes and that allegations of voting irregularities have been addressed.

To reassure citizens of the integrity of our election processes and to reassure the public and Congress of DOJ's commitment to its responsibility to enforce federal voting rights statutes, we recommend that the Attorney General direct the Chief of the Voting Section to take the following two actions

- develop and implement procedures for the November 2004 election to help ensure that the Voting Section has a reliable method of tracking and documenting allegations of voting irregularities and actions taken to address them. Procedures could include more precise categories to record types of allegations and actions taken; development of instructions on completing the telephone logs; and development and implementation of training for contractors, should they be needed; and
- implement a method to track and report on election-monitoring activities in the ICM system.

#### **Agency Comments**

We provided a draft of this report to DOJ for review and comment. The draft report sent to DOJ for comment reflected changes made as a result of DOJ's prior detailed review of attachment IV in enclosure I and changes DOJ requested in writing following our exit conference with them. In commenting on the draft, DOJ generally agreed with the report and recommendations. The Deputy Assistant Attorney General for the Civil Rights Division accepted both recommendations and said that the

Assistant Attorney General for the Civil Rights Division has directed their implementation.

In commenting on our recommendation for the Civil Rights Division to track and report on election-monitoring activities in the ICM system, DOJ noted that it currently has procedures that effectively track election-monitoring activities. Our report acknowledges that the Division had information on election monitoring. However, the Voting Section told us that they did not routinely track election-monitoring activities in the ICM system—its formal process for tracking and managing work activities. Because we had asked for clarification of the confusing and unclear information previously provided on election monitoring and tracking, the Civil Rights Division, in a May 25, 2004, written response provided clarifying information that explained the different databases and data from logs that were used to capture information on election monitoring. In this written response, the Civil Rights Division included four charts on election monitoring that had been recently created, one for each calendar year from 2000 through 2003 (but not for 2004, as the Division states it did). In addition, the Civil Rights Division said that it had asked for a program that would provide the types of reports and data that the Division is routinely asked to provide regarding the election-monitoring program. Our recommendation is directed toward improving the Voting Section's tracking of election-monitoring activities, which the Voting Section has emphasized as being a very important part of its efforts to help ensure voter access to the polls. Tracking election-monitoring activities in the ICM system would ensure that this important component of the Voting Section's work is incorporated into the Division's formal process for tracking and managing work activities.

After we provided DOJ with a copy of the draft report that included this correspondence and its enclosure for review and comment, Civil Rights Division officials realized they had not provided us with information on all of the telephone logs used following the November 2000 election. The Civil Rights Division subsequently provided that additional information, which showed that Voting Section staff used two additional types of logs for the November 2000 election. These logs included columns to record callers' names, telephone numbers, states, and descriptions of the calls. This new information was incorporated into our report to accurately reflect the Voting Section's activities to track telephone calls following the November 2000 election. (See p. 5 in this letter and p. 42 in enc. I.) According to the Civil Rights Division, the November 2002 log, which it proposes as the basis for documenting telephone calls related to the upcoming November 2004 elections, was the only one used by Voting Section staff for the November 2002 election.

DOJ noted that the draft report discussion of the Civil Rights Division's use of telephone logs focused almost exclusively on the logs maintained by contractors, that the draft report failed to note that these logs were only a small portion of all the records of telephone calls received by the Division, and that any shortcomings in these logs were extremely unlikely to have changed the course of subsequent investigations. As we note in our report, it was difficult to obtain precise information on the number of calls or the specific nature of alleged irregularities from the

telephone logs on the November 2000 election. The information that the Voting Section collected on its telephone logs was not precise enough to support the Division's statements that upwards of 95 percent of the calls received regarding the November 2000 election reflected citizen frustration or anger over the election, that the vast majority of the calls that contractors received came from New York and California, or that the vast majority of the calls from those two states expressed frustration over the situation in Florida. Moreover, it is important to note that our recommendation with regard to recording complaints about voting irregularities for the November 2004 election is based on the limitations of the log used in November 2002 and the lack of a clear plan for accurately recording a potentially large volume of complaints that may arise from the November 2004 election. For example, November 2004 will be the first national election in which all states will be implementing HAVA's new voter identification and provisional voting requirements with which many voters may be unfamiliar.

In its comments, DOJ said that the Civil Rights Division invited us to meet with Voting Section staff who worked during the time of the November 2000 election and that we declined this invitation. We did not receive an invitation from officials in the Civil Rights Division, who arranged our meetings with Voting Section staff, to meet to discuss the November 2000 election logs. Throughout this review, we requested meetings with Voting Section and Civil Rights Division officials. It is always our preference, as part of our work, to meet with agency officials to discuss issues and questions we may have about agency processes, procedures, and documentation. However, Civil Rights Division officials preferred that we provide questions in writing and to respond to those questions in writing. The Civil Rights Division sometimes took weeks to respond in writing, which contributed significantly to the length of time it took us to complete our review. Had Civil Rights Division officials been more willing to meet with us to explain the Voting Section's processes and discuss the documentation provided to us, rather than rely on written questions and responses, the time required for this review could have been significantly reduced.

DOJ's written comments are in attachment V. DOJ also provided technical comments from the Criminal Division's Public Integrity Section and from the Civil Rights Division, which we incorporated as appropriate. The Civil Rights Division provided additional information on cases initiated for calendar years 2002, 2003, and 2004. The 2002 and 2003 cases involved enforcement under Sections 2 and 208 of the Voting Rights Act and were not clearly identifiable in the ICM system as also involving language minority issues under Section 203 of the Voting Rights Act. The Civil Rights Division subsequently identified these cases as including enforcement of language minority violations, and we have included them in our report. Information on cases initiated in calendar year 2004 had not been included because our review covered complete calendar years, but we have added information on cases initiated in 2004 as of August 2004 as a courtesy to the Division.

As agreed with your offices, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we

will send copies of this report to the Attorney General, Department of Justice; Chairman, Senate Committee on Governmental Affairs; Chairman, House Committee on Government Reform; Chairman, House Committee on the Judiciary; Chairman and Ranking Minority Member, House Committee on House Administration; and Chairman and Ranking Minority Member, Senate Committee on Rules and Administration. Copies of this report will be made available to other interested parties upon request. This report will also be available on GAO's Web site at <http://www.gao.gov>. If you have any questions, please contact me at (202) 512-8777 or by e-mail at [jenkinswo@gao.gov](mailto:jenkinswo@gao.gov) or Linda Watson, Assistant Director, at (202) 512-8685 or by e-mail at [watsonl@gao.gov](mailto:watsonl@gao.gov). Key contributors to this report were Katherine Davis, Gina Flacco, Evan Gilman, Geoffrey Hamilton, Mary Martin, Maria Santos, and Daniele Schiffman.



William O. Jenkins, Jr.  
Director, Homeland Security and Justice Issues

Enclosures

Enclosure I

 <p style="text-align: right;"><b>Enclosure I</b></p> <hr/> <p style="text-align: center;"><b>DOJ Activities to Address Past Election-Related Voting Irregularities</b></p> <hr/> <p style="text-align: center;">Results of work completed for the Ranking Minority Member of the House Committee on Government Reform, Ranking Minority Member of the House Committee on the Judiciary, and Ranking Member of the Senate Committee on Governmental Affairs</p> <p style="text-align: center;">August 31, 2004</p> <hr/> <p style="text-align: right;">1</p>
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## Enclosure I

 GAO Accountability * Integrity * Reliability	Contents
<ul style="list-style-type: none"><li>• Objectives</li><li>• Results in Brief</li><li>• Scope and Methodology</li><li>• Background</li><li>• Changes to Ensure Voter Access</li><li>• Actions to Track, Address, and Assess Allegations</li><li>• Assessment of Internal Controls</li><li>• Conclusions</li><li>• Recommendations</li><li>• Attachment I—Federal Voting Rights Statutes</li><li>• Attachment II—Role of the Criminal Division’s Public Integrity Section</li><li>• Attachment III—Election Jurisdictions Monitored during 2000-2003</li><li>• Attachment IV—Election-Related Preliminary Investigation, Matters, and Cases Initiated from November 2000 to December 2003</li><li>• Attachment V—Agency Comments</li></ul>	2

## Enclosure I

	Objectives
This briefing addresses the following objectives:	
<ol style="list-style-type: none"><li>1. Identify and describe any changes the Department of Justice (DOJ) has made since November 2000 to help ensure voter access to the polls.</li> <li>2. Identify and describe any actions that the Voting Section in DOJ's Civil Rights Division has taken to track (monitoring work initiated and actions taken), address, and assess allegations of election-related voting irregularities received between November 2000 and December 2003.<ul style="list-style-type: none"><li>• Election-related refers to a preliminary investigation, matter, or case that the Voting Section initiated pursuant to an allegation about a specific election.</li></ul></li></ol>	
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## Enclosure I

	Objectives
<ul style="list-style-type: none"> <li>• A <b>preliminary investigation</b> is an investigation into an allegation that has not been assigned an identification number. A <b>matter</b> is an activity that has been assigned an identification number but has not resulted in a court filing of a complaint, indictment, or information. A <b>case</b> is an activity that has been assigned the same identification number that it had as a matter and has resulted in the court filing of a complaint, indictment, or information.</li> <li>• Voting irregularities, for purposes of this review, generally refer to a broad array of complaints relating to voting and/or elections that may involve violations of federal voting rights and/or federal criminal law for which DOJ has enforcement responsibilities.</li> </ul> <p>3. Assess the Voting Section's internal control activities to help ensure relevant, accurate, and reliable recording and documentation of allegations of voting irregularities for management decision-making and external reporting purposes.</p> <ul style="list-style-type: none"> <li>• Internal controls are integral components of an organization's management that provide reasonable assurance of objectives that include, among other things, efficient operations. They comprise the plans, methods, and procedures used to meet missions, goals, and objectives and, in doing so, support performance-based management.</li> </ul>	4

## Enclosure I

	Results in Brief
<ol style="list-style-type: none"><li>1. Since November 2000, DOJ has increased its monitoring of election activities on election day, provided additional training to Assistant U.S. Attorneys on civil rights laws, placed a greater priority on protecting the voting rights of language minorities and overseas voters, and provided guidance to states regarding implementation of the Help America Vote Act (HAVA).</li><li>2. The Civil Rights Division tracks matters and cases through a case management system. Telephone calls related to the 2000 and 2002 federal elections were tracked using telephone logs. The Voting Section addressed allegations of voting irregularities by contacting cognizant officials, obtaining data if deemed appropriate, and assessing the merits of the allegation to determine what, if any, further action was needed.</li><li>3. The Voting Section tracked the unprecedented volume of telephone calls related to the November 2000 election by using logs. Some logs had several broad categories to capture the subject of the calls and rows for states from which the calls originated, while other logs contained callers' names, contact information, and description of the calls. The Voting Section improved upon the telephone log for the November 2002 election by including categories to capture the action taken on each call and to record the caller's name, telephone number, and subject of the call. The Voting Section tracked some monitoring of elections by assigning matter identification numbers.</li></ol>	
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Enclosure I



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Scope and Methodology

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## Enclosure I

	Scope
To address our objectives, we performed work at DOJ's:	
<ul style="list-style-type: none"><li>• Civil Rights Division's Voting Section,</li><li>• Criminal Division's Public Integrity Section (PIN),</li><li>• Federal Bureau of Investigation's (FBI) Public Corruption Unit, and</li><li>• Executive Office for U.S. Attorneys (EOUSA).</li></ul>	
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## Enclosure I

Methodology  
Objective 1

To identify changes in DOJ's efforts to help ensure voter access to the polls, we

- gathered documentation on DOJ's efforts to
  - monitor and observe elections,
  - increase emphasis on enforcement of minority language and overseas voters' rights,
  - disseminate election-related guidance, and
  - increase its resources to address voting issues, and
  
- interviewed responsible officials primarily in DOJ's Voting Section and PIN.

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## Enclosure 1

Methodology  
Objective 2

To identify DOJ's actions to track, address, and assess allegations of voting irregularities, we

- interviewed officials in the Voting Section about procedures for tracking, addressing, and assessing allegations of voting irregularities;
- analyzed information on the approximately 11,000 reported telephone calls made to the Voting Section about the November 2000 election; and
- reviewed all files that the Voting Section identified as those it considered to be election-related voting irregularities that were initiated from November 2000 to December 2003. This included 1 closed preliminary investigation, 25 closed matters, and 8 closed and open cases. The Voting Section tracks its matters and cases based on statutes it enforces and not on whether an allegation relates to a specific election. Consequently, the Voting Section had to identify for us the preliminary investigation, matters, and cases that it considered to be election-related voting irregularities.

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Enclosure I



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Background

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Voting Section

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## Enclosure I

Background  
Voting Section

Voting Section responsibilities include:

- enforcing the Voting Rights Act, which is designed to safeguard the right to vote of racial and language minorities and illiterate persons, among other provisions;
- enforcing federal statutes designed to safeguard the right to vote of disabled, elderly, military, and overseas voters; and
- enforcing provisions of the National Voter Registration Act, and the Help America Vote Act (HAVA) which address issues such as voter registration, provisional voting, and voter information.

Attachment I provides more information on statutes that the Voting Section enforces.

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## Enclosure 1

Background  
Voting Section

The Voting Section, among other things, monitors election-day activities to ensure voting rights are protected and initiates investigations and opens matters to examine allegations of voting irregularities that fall within the jurisdiction of the Civil Rights Division. If warranted, a matter may culminate in a case that is filed with a federal court.

Voting Section attorneys are generally responsible for conducting investigations and prosecuting civil cases. The Voting Section also may initiate matters to monitor private lawsuits.

The Voting Section coordinates with the Criminal Division's Public Integrity Section (PIN) to help ensure voters' rights are protected, such as referring three allegations to PIN about possible election crimes related to the 2002 election. (See attach. II for more information about PIN's election-related responsibilities.)

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## Enclosure I

GAO		Background Voting Section	
Accountability • Integrity • Reliability			
The following table provides information on all matters and cases initiated by the Voting Section in calendar years 2000 through 2003.			
Year Initiated	Matters	Cases	Total
2000	70	18	88
2001	53	6	59
2002	127	18	145
2003	99	4	103
<b>Total</b>	<b>349</b>	<b>46</b>	<b>395</b>

Source: GAO analysis of data from DOJ's Civil Rights Division's Voting Section.

According to Voting Section officials, the number of matters was higher in 2002 because the Voting Section initiated new matters for each of the over 80 newly covered jurisdictions required by the Voting Rights Act to provide bilingual election materials and assistance to language minority citizens. Following the 2000 Census, DOJ, in conjunction with the U.S. Census Bureau, identified these 80 jurisdictions. The Voting Rights Act requires jurisdictions to provide language minority assistance when certain criteria are met, such as when more than 5 percent of the citizens of voting age, or more than 10,000 of the citizens of voting age, are members of a single language minority group, and are unable to speak or understand English adequately enough to participate in the electoral process.

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## Enclosure I

GAO Accountability • Integrity • Reliability		Background Voting Section
As shown in the following table, the Voting Section's positions for attorneys (authorized and on-board) increased since the beginning of fiscal year 2000.		
Time period	Authorized attorney positions	Attorneys on-board
Start FY 2000	34	31
End FY 2000	36	35
End FY 2001	47	40
End FY 2002	47	42
End FY 2003	41	38
As of April 16, 2004	41	39

Source: DOJ's Civil Rights Division's Voting Section.

The number of authorized and on-board attorneys declined at the end of fiscal year 2003 because the number of submissions to the Voting Section for redistricting changes following the 2000 Census began to decline that year, according to Voting Section officials. Every 10 years, after the federal census, states redraw their legislative election districts to make these districts equal in population. The process of drawing new election district boundaries is called redistricting.

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Enclosure I

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Changes to Help Ensure Voter Access

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## Enclosure I

	<b>Changes to Help Ensure Voter Access Results in Brief</b>
<p>Since November 2000, DOJ focused on ensuring voter access to the polls by</p> <ul style="list-style-type: none"><li>• placing more emphasis on its election-monitoring program,</li><li>• providing additional training for certain Assistant U.S. Attorneys who handle election-related issues that included placing more emphasis on handling civil rights issues,</li><li>• directing U.S. Attorney Offices to contact election and other officials at the state and local level to offer assistance prior to election day,</li><li>• placing greater priority on enforcing the voting rights of language minorities and overseas voters, and</li><li>• providing guidance to states regarding HAVA implementation.</li></ul>	
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## Enclosure I

**Changes to Help Ensure Voter Access  
Emphasis Placed on Election Monitoring**

In March 2001, the Attorney General announced that DOJ was placing more emphasis on its election-monitoring program. The Attorney General is authorized by law to notify the Office of Personnel Management (OPM) of the need to assign federal observers to monitor polling place activities on election day in counties that the Attorney General has certified under the Voting Rights Act and in counties authorized by federal court orders. The Attorney General delegates the authority with respect to federal observers to the Voting Section. The Voting Section's decision to request federal observers is based on past experience or investigations that indicated observers may be needed to protect voting rights. (See attach. I for information on the law authorizing federal observers.)

In addition to OPM federal observers, the Voting Section assigns DOJ attorneys and professional staff to monitor election day activities in local jurisdictions throughout the United States, whether or not the locations have been certified under the Voting Rights Act. This additional monitoring is part of the Voting Section's investigations of possible voting rights violations. Unlike OPM observers, DOJ attorneys and professional staff do not have specific statutory right of access to polling places and must get authority from the appropriate state and/or local officials for them to enter polling places.

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## Enclosure I

**Changes to Help Ensure Voter Access  
Emphasis Placed on Election Monitoring**

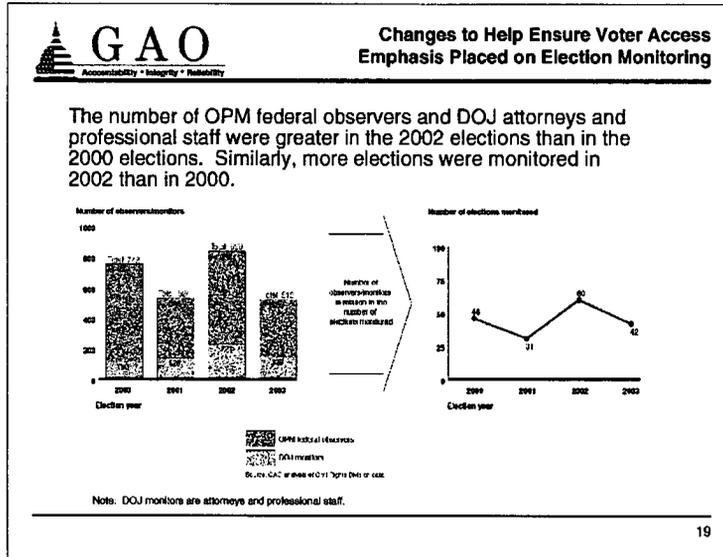
DOJ attorneys and professional staff are assigned to these jurisdictions when there may be insufficient time to arrange for federal observers in covered jurisdictions, or when the results of Voting Section staff's pre-election investigations indicate the need for some limited federal presence.

The Attorney General directed the Voting Section to increase resources devoted to the election-monitoring program through the use of OPM federal observers and DOJ attorneys and professional staff.

The level of resources used and number of elections monitored were greater in federal election years (even-numbered years) than other years, as shown in the next figure.

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Enclosure I



## Enclosure I

	<b>Changes to Help Ensure Voter Access Emphasis Placed on Election Monitoring</b>
<p>OPM federal observers are always accompanied by DOJ attorneys and professional staff when monitoring elections and were present for elections held during calendar years 2000 through 2003 in Attorney General-certified and court-ordered counties and jurisdictions in several states. In a few instances, DOJ attorneys and professional staff independently monitored elections in these Attorney General-certified and court-ordered counties and jurisdictions.</p> <p>DOJ attorneys and professional staff also independently monitored elections in counties and jurisdictions that were not Attorney General-certified or under court order during this 4-year period. In 2000, DOJ attorneys and professional staff monitored elections in 5 counties in 5 states. By 2002, the number of election jurisdictions monitored by DOJ attorneys and professional staff increased to 19 counties in 10 states, with monitoring of elections in counties in Florida accounting for the bulk of the increase.</p> <p>According to the Voting Section, election monitoring is a high-priority program of DOJ and a very important part of the Section's efforts to address voting irregularities.</p> <p>See attachment III for more information on election monitoring in Attorney General-certified and court-ordered election jurisdictions and election jurisdictions that DOJ monitored independently.</p>	
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## Enclosure I

	<b>Changes to Help Ensure Voter Access Training</b>
<p>Officials in the Voting Section and PIN said that Assistant U.S. Attorneys can attend annual public corruption conferences, where they receive (1) training on handling election crime investigations and prosecutions and (2) periodic updates to DOJ's manual on prosecuting election crimes. Starting in October 2002, additional annual training, referred to as the Ballot Access and Voting Integrity Conference, was provided to Assistant U.S. Attorneys who, in coordination with DOJ headquarters, handle election-related matters for the 93 U.S. Attorneys.</p>	
<p>The Ballot Access and Voting Integrity Conference training, according to Civil Rights Division officials, included civil rights issues that had not been covered in the training offered to Assistant U.S. Attorneys prior to October 2002 and was designed to provide them a better understanding of what the Voting Section does to enforce federal voting rights statutes. Also, according to the Civil Rights Division, the presentations that the Voting Section made at this annual training conference placed special emphasis on the election-monitoring program and solicited the Assistant U.S. Attorneys' involvement in helping to enforce federal voting rights laws, ballot access, and the election-monitoring program. According to PIN, this training, which was mandatory for the Assistant U.S. Attorneys designated as district election officers, also covers voting integrity issues important to election crime matters.</p>	
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## Enclosure I

**Changes to Help Ensure Voter Access  
Training**

The Ballot Access and Voting Integrity Conference training was provided to Assistant U.S. Attorneys in October 2002, September 2003, and July 2004.

The training materials for 2002 included topics related to federal voter registration and election-day statutes that the Voting Section enforces, which include the Voting Rights Act, National Voter Registration Act, and the Uniformed and Overseas Citizens Absentee Voting Act, and topics related to handling election crime investigations, trials, and the statutes and theories used to address election crimes.

The 2003 training materials included, in addition to the same topics covered in 2002, information on HAVA and election monitoring by federal observers. According to PIN and the Voting Section, the content of the 2004 training was similar to that provided in previous years.

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## Enclosure I

**Changes to Help Ensure Voter Access  
Contacts with State and Local Election Officials**

In October 2002, the Attorney General directed each U.S. Attorney to coordinate with state and local election and law enforcement officials prior to the November 2002 elections to, in part, explore ways that they could work more closely together to deter and detect discrimination and to deter and prosecute election crimes.

According to PIN officials, the Attorney General's October 2002 directive (1) formalized an ad-hoc practice that had existed in DOJ for many years of coordinating elections and election-related matters with state officials and (2) led to a systematic effort to coordinate election issues and matters with these officials.

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## Enclosure I

**Changes to Help Ensure Voter Access  
Contacts with State and Local Election Officials**

Prior to the November 2002 federal elections, almost all of the U.S. Attorney Offices reported to PIN that they had contacted various state or local officials either by telephone, in writing, or in person.

The state and local officials contacted varied by each U.S. Attorney Office. For example, according to PIN,

- the three U.S. Attorneys in the state of Florida reported having met with the Florida Secretary of State and
- the U.S. Attorney for the Southern District of California reported having met with the San Diego County Registrar of Voters, Election Administrator, and Deputy District Attorney, and the Imperial County Registrar of Voters and District Attorney.

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## Enclosure I


**Changes to Help Ensure Voter Access  
Contacts with Civil Rights and Other Organizations**

The Attorney General directed the Civil Rights Division was to work with civil rights leaders, state and local election officials, and U.S. Attorney Offices prior to election day in an effort to help ensure that citizens' voting rights are protected. The Attorney General also directed the Criminal Division to work with these same groups in helping to preserve ballot integrity and prevent election offenses.

According to the Voting Section, the Assistant Attorney General for the Civil Rights Division has met with representatives of civil rights organizations to discuss the Voting Section's election-monitoring program and its plans for monitoring the November 2004 election and has made other presentations concerning voting rights issues at many of these organizations' meetings and conferences. The Voting Section also said that as this election approaches, it plans to ask civil rights organizations what election jurisdictions they believe the Voting Section should consider monitoring.

The Voting Section also said that since October 2002, staff from the Civil Rights Division have made presentations to, met with, or received presentations from various civil rights and other organizations, such as the NAACP, Lawyers' Committee for Civil Rights Under Law, League of United Latin American Citizens, Leadership Conference on Civil Rights, AARP, National Association of Secretaries of State, and National Association of State Election Directors.

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## Enclosure I

	<b>Changes to Help Ensure Voter Access Language Minority Voting Rights</b>
<p>In 2002, the Civil Rights Division made enforcement of voting rights laws that address access to voting for language minority groups one of the Voting Section's highest priorities. DOJ reported in a civil rights accomplishments fact sheet that the Civil Rights Division conducted an outreach campaign with state and local election officials and local language minority groups to help ensure access to bilingual voting materials for language minority groups. This was begun in July 2002 following the certification of covered jurisdictions based on the results of the 2000 census.</p> <ul style="list-style-type: none"><li>• The fact sheet states that the outreach included a July 2002 letter from the then- Assistant Attorney General for the Civil Rights Division to each of the 296 political jurisdictions covered by Section 203 of the Voting Rights Act notifying them of their bilingual access obligations in the upcoming and future elections. According to the Civil Rights Division, attorneys from the Division visited many of the 296 counties covered by Section 203.</li><li>• In addition, the fact sheet reported that Civil Rights Division attorneys conducted in-person meetings with state and local election officials and local language minority groups in almost all of the more than 80 newly covered jurisdictions.</li></ul>	
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## Enclosure I

**Changes to Help Ensure Voter Access  
Language Minority Voting Rights**

We analyzed data as of March 15, 2004, on matters and cases related to Section 203 language minority issues recorded in DOJ's Interactive Case Management (ICM) system, which is used to track and manage these data. We found that the Voting Section initiated 7 matters and no cases in 2000, 13 matters and 2 cases in 2001, 94 matters and 1 case in 2002, and 28 matters and no cases in 2003. According to the Civil Rights Division, the Division also initiated the following cases: (1) two language assistance cases in 2002 under Section 2 and Section 208 of the Voting Rights Act; (2) two cases in 2003 under Section 2, Section 203, and Section 208 of the Voting Rights Act; and (3) five cases in 2004 under Section 203 of the Voting Rights Act. Sections 2, 203, and 208 of the Voting Rights Act are described in attachment I.

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## Enclosure I


**Changes to Help Ensure Voter Access  
Uniformed and Overseas Citizens**

Given the large number of troops deployed overseas and an increase in concerns about late mailing of absentee ballots, Voting Section officials said that the Voting Section placed increased priority in 2004 on enforcing and preparing to ensure compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which only applies to federal elections. These officials cited the following enforcement and preparation activities during 2004.

- Obtained a court order in April for emergency relief to remedy an UOCAVA violation committed during the Pennsylvania primary election.
- Negotiated with the state of Alabama in May to obtain a similar emergency relief order from a state court for a county's failure to provide enough time for the mailing and return of ballots from overseas voters for its primary election.
- Obtained a court order in an UOCAVA lawsuit in July against the state of Georgia for similar emergency relief for its primary election.
- Established a working group of Voting Section attorneys to facilitate communications with the Department of Defense's Federal Voting Assistance Program, which is charged with administering UOCAVA, and to plan for the possibility of more UOCAVA litigation during 2004.

Our analysis of matters and cases in DOJ's ICM system as of March 15, 2004, showed that the Voting Section initiated 3 matters and 2 cases during calendar years 2000 through 2003 involving the issue of absentee voting by uniformed and overseas citizens. All 5 of the matters and cases were initiated in 2002.

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## Enclosure I


**Changes to Help Ensure Voter Access  
Guidance to States on HAVA**

In October 2002, HAVA established the Election Assistance Commission to, in part, serve as a national clearinghouse and resource to compile information and review procedures related to federal election administration and provide guidance on implementing certain HAVA requirements. Because the Election Assistance Commission was not established until December 2003, the Voting Section provided informal, nonbinding guidance to states on implementing the requirements of HAVA.

The Voting Section's guidance to states on HAVA's requirements included

- interpreting requirements of the law and advising states on how to comply with them based on DOJ's enforcement role under HAVA;
- responding to inquiries from state and local officials;
- making presentations at various meetings and conferences;
- writing letters to the chief state election official, governor, and attorney general in each of the 50 states, the District of Columbia, and the U.S. territories offering to assist the jurisdictions in their efforts to ensure compliance with HAVA and summarizing HAVA provisions;
- creating a HAVA information page on its Web site; and
- issuing a press release that outlined provisions of HAVA that took effect on January 1, 2004, such as provisional voting and identification requirements for new voters who register by mail.

According to the Civil Rights Division, the Voting Section also filed its first enforcement action in California in 2004 against a county for violating the voter information provisions of HAVA.

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## Enclosure I

 <b>GAO</b> <small>Accountability • Integrity • Reliability</small>	<b>Changes to Help Ensure Voter Access Plans for November 2004 Election</b>
<p>According to Voting Section officials, DOJ's plans for helping to ensure voter access for the November 2004 election include</p>	
<ul style="list-style-type: none"><li>• increasing its on-site monitoring of elections considerably over prior years through greater use of staff from other sections in the Civil Rights Division. Voting Section officials also said that final decisions as to where monitoring will be conducted are not made public until shortly before an election, but they told us that the Voting Section has prepared a list of jurisdictions for consideration based on consent decrees and will update the list with other jurisdictions being considered for coverage as the election approaches. According to these officials, the Voting Section has not established a specific goal for achieving an increase in staff or elections to be covered, and</li><li>• coordinating with civil rights organizations that will be monitoring the election and establishing procedures for bringing their concerns about specific issues or jurisdictions to DOJ on or before election day in November 2004.</li></ul>	
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Enclosure 1



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**Actions to Track, Address, and Assess Allegations**

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## Enclosure I

 <b>GAO</b> <small>Accessibility • Integrity • Reliability</small>	<b>Actions to Track, Address, and Assess Allegations Results in Brief</b>
<p>In our review, we found that the Civil Rights Division had formal procedures to track matters and cases to address voting irregularities. Specifically, the Voting Section tracks investigative matters and cases through the Division's ICM system using unique identification numbers. In addition, the Voting Section tracked telephone calls alleging voting irregularities for the November 2000 and November 2002 elections using telephone logs.</p>	
<p>Voting Section attorneys addressed and assessed allegations of election-related voting irregularities initiated from November 2000 to December 2003 in various ways, depending on the allegation. Our review of files related to 1 preliminary close investigation, 25 closed matters, and 8 open and closed cases generally found that attorneys contacted cognizant officials and assessed the legal merits of evidence of alleged violations of civil rights laws.</p>	
<p>In our review of files, we found that Voting Section attorneys generally addressed allegations of voting irregularities initiated from November 2000 to December 2003 through a preliminary investigation or investigative matters and took actions such as interviewing election officials at state and local levels, interviewing voters affected by alleged voting irregularities, and meeting with civil rights groups.</p>	
<p>Our review of Voting Section files also found that Voting Section attorneys, in conjunction with supervisory attorneys, assessed information collected and determined whether (1) federal voting rights laws were violated; (2) an investigation should be closed, or (3) further action was needed by the Voting Section, such as filing a complaint with a federal court or continued monitoring.</p>	
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## Enclosure I

**Actions to Track, Address, and Assess Allegations  
Tracking Allegations of Voting Irregularities**

The ICM is a database system that the Voting Section uses to track and manage matter and case data for the Section and can be used to generate reports.

Each matter and case is assigned a DJ number, which is a unique identification number. Information on matters and cases can be searched by the identification numbers, statutes, and other information maintained in the system.

The system is set up to automatically enter certain data and has required fields for which data must be entered. Voting Section staff can enter other data into the system, as appropriate.

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## Enclosure I


**Actions to Track, Address, and Assess Allegations  
Tracking Allegations of Voting Irregularities**
**Officials told us that the Voting Section**

- receives numerous citizen calls, comments, and questions daily;
- receives telephone calls, e-mails, faxes, letters, and packages. Most of the calls and written allegations from citizens do not concern issues within the jurisdiction of the Civil Rights Division and, in such instances, the caller is often notified of this determination over the telephone and referred to other state or federal agencies with possible jurisdiction;
- documented telephone calls received at the Section's toll free telephone number using telephone logs for the 2000 and 2002 elections;
- found that only a small percentage of allegations that it received following the November 2000 election fell within its jurisdiction or presented substantive issues that merited further review. Notations on logs documenting telephone calls related to the November 2000 election indicated that some of the calls— we were unable to quantify the number of calls because of the way calls were recorded— were related to dissatisfaction with the outcome of the election or other issues, such as general complaints about the election process that contained no specific allegations of violations of federal laws;
- in addition to following up with people who called the Voting Section after the November 2000 election, Voting Section staff pursued other avenues of complaints, such as complaint logs generated by the NAACP Voter Fund, hearings conducted by the U.S. Commission on Civil Rights and the NAACP, and incidents receiving a large amount of publicity, to determine if federal laws had been violated; and
- expects attorneys to find new matters for investigation in addition to assignments made by Section management.

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## Enclosure I


**Actions to Track, Address, and Assess Allegations  
Tracking Allegations of Voting Irregularities**

Voting Section officials told us that on election day

- in addition to calls received by the Section at its toll-free number, an OPM federal examiner maintains a toll-free telephone number to receive calls. An examiner is a federal employee assigned by OPM to receive complaints of racial or minority language discriminatory voting practices. (See attach. I for the statute related to federal examiners.) Any allegations taken by the examiner that are deemed to require immediate attention are routed to the Civil Rights Division when received, while other allegations are transmitted after the election and reviewed to determine if further action is needed. According to the Chief of the Voting Section, they received few, if any, allegations from examiners in relation to the November 2000 election, and
- a small number of Civil Rights Division staff remain available at the Voting Section on major election days to take citizen calls, with the vast majority of Section staff at various locations around the country for monitoring purposes. Major problems that arise from these calls are routed to attorney supervisors to determine what actions are needed.

Our review of files included five matters that were initiated to monitor elections. According to Voting Section officials, this activity is not routinely tracked through the ICM, but they plan to designate a single identification number to track this activity.

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## Enclosure I

**Actions to Track, Address, and Assess Allegations**  
**Actions to Address Allegations**

The following presents information on the Voting Section's process for addressing allegations related to voting irregularities.

- If the Voting Section deems that a voting allegation falls within its jurisdiction and appears to have merit, an attorney is assigned to make inquiries about the allegation. The attorney performs some investigative work to determine whether the allegation should be pursued.
- If an attorney believes a matter should be investigated, the attorney discusses this with the Deputy Chief responsible for the state in which the matter rises. The Section Chief and Deputies decide whether or not to formally open a matter. The Voting Section assigns a number to the matter for tracking purposes.
- When Voting Section staff monitor elections and receive allegations of or information about voting irregularities while on site, they make efforts to resolve allegations by contacting local election officials immediately. Further investigation of such irregularities is conducted after an election if the allegation was not resolved on election day or if it is deemed otherwise necessary to prevent such problems from arising in the future.

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## Enclosure I

	<b>Actions to Track, Address, and Assess Allegations</b> <b>Actions to Address Allegations</b>
<p>Our file review found that the Voting Section generally took the following actions during its investigations initiated from November 2000 to December 2003:</p>	
<ul style="list-style-type: none"><li>• Interviewed state and county election officials, other state and county officials who may provide insight into the investigation, state Attorneys General, voters raising the allegations, and representatives from the NAACP and other minority groups.</li><li>• Requested documentation detailing certain election procedures.</li><li>• Facilitated the resolution of allegations and issues that arose during elections, when monitoring elections. If Voting Section staff monitoring elections received allegations about voting irregularities, they immediately took steps to resolve the allegations by contacting local election officials.</li><li>• Where deemed appropriate, filed enforcement actions in federal court against jurisdictions that allegedly violated federal voting rights laws by either obtaining judgments against them or entering into consent decrees with jurisdictions that agree to remedy their alleged violations of federal voting statutes.</li></ul>	
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## Enclosure I

	<b>Actions to Track, Address, and Assess Allegations</b> <b>Actions to Assess Allegations</b>
<p>Following the investigation of a preliminary investigation or matter, a Voting Section attorney, in conjunction with a supervisor, determines whether the allegation has merit, whether the preliminary investigation or matter should be pursued further, or whether the preliminary investigation or matter should be closed. The determination to close a matter or pursue it as a case is a legal judgment and is often based on whether there is deemed to be a sufficient evidence of violations of voting rights laws and whether the state or local election officials have taken action to correct problems.</p> <p>The Voting Section identified a total of 34 closed investigations and open and closed cases initiated between November 2000 and December 2003 that it considered to involve election-related voting irregularities: 1 closed preliminary investigation, 25 closed matters, and 8 open and closed cases.</p> <p>The preliminary investigation was closed because the Voting Section concluded that the allegation lacked merit.</p>	
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## Enclosure I

	<b>Actions to Track, Address, and Assess Allegations</b> <b>Actions to Assess Allegations</b>
<p>For the 25 closed matters:</p> <ul style="list-style-type: none"> <li>• 13 were closed because the Voting Section concluded that the allegations lacked merit;</li> <li>• 5 were closed because the state or voting jurisdictions took actions to resolve the issues (e.g., one state passed an election law, and the Voting Section approved changes to election procedures that one city had proposed);</li> <li>• 4 were closed following the completion of elections, and the Voting Section provided feedback or observations related to election procedures while monitoring elections;</li> <li>• 2 were closed because voting jurisdictions implemented changes for future elections; and</li> <li>• 1 was closed because a state court issued an order addressing the issue.</li> </ul> <p>For the 8 cases:</p> <ul style="list-style-type: none"> <li>• 6 are open pending fulfillment of consent decrees entered into on behalf of DOJ and the jurisdiction in alleged violation of statute, and</li> <li>• 2 are closed because consent decrees entered into on behalf of DOJ and the jurisdictions in alleged violation of statutes required states to take corrective actions and states did so by passing legislation, among other actions.</li> </ul> <p>Attachment IV provides detailed information on the results of our file review of the 34 closed preliminary investigation and matters and open and closed cases initiated from November 2000 to December 2003 that the Voting Section considered as involving election-related voting irregularities.</p>	
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Enclosure I



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Assessment of Internal Controls

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## Enclosure I

	<b>Assessment of Internal Controls Results in Brief</b>
<p>In our review, we found that</p> <ul style="list-style-type: none"><li>• the Voting Section tracked telephone calls related to the November 2000 election by using telephone logs. Some logs had several broad categories to capture the subject of the calls, rows for states from which the calls originated and, for the most part, tabulated the numbers of calls using tick marks. Other logs that the Voting Section used contained information such as callers' names, telephone numbers, and descriptions of the calls. The Voting Section improved upon the telephone log for the November 2002 election by including columns to record the action taken on each call in addition to recording the caller's name and telephone number, but has one column to capture the subject of the call, and</li><li>• as mentioned previously, the Voting Section tracked some monitoring of elections by opening matters and assigning each matter an identification number. According to Voting Section officials, it has not routinely tracked election-monitoring activities through the case management system but is considering assigning one identification number to track election-monitoring activities.</li></ul>	
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## Enclosure I

**Assessment of Internal Controls  
November 2000 Election Telephone Logs**

The Voting Section received an unprecedented volume of telephone calls in November and December 2000 related to the unusual events surrounding the November 2000 presidential election.

- The Voting Section reported to the Senate Committee on the Judiciary that it received approximately 11,000 calls related to the November 2000 election. In comparison, the Voting Section told us it received several hundred calls related to the November 2002 election. The Voting Section told us it does not have records of telephone calls related to other elections except to the extent that such telephone calls generated investigations that became matters or cases.
- According to the Voting Section, contractors were hired in November 2000 to help handle the unprecedented number of incoming telephone calls received concerning the November 2000 election to help ensure that the public would be able to voice opinions and concerns. Hiring contractors was not intended as a mechanism to gather specific allegations.
- Voting Section staff and contractors kept telephone logs that consisted of tables with columns identifying broad categories of allegations or comments and rows with the state from which a call originated. Voting Section staff also kept two other types of logs, which included the caller's name, state, telephone number, and description of the call. Calls were recorded on most logs as tick marks, while some logs included limited narrative on the nature of the call.

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## Enclosure I


**Assessment of Internal Controls  
November 2000 Election Telephone Logs**

Our analysis of the telephone call logs completed by contractors found the following:

- It was difficult to count how many calls were received because, for example, one caller could have made multiple complaints and some logs appeared to be duplicates.
- The call logs did not include a way to record calls from 4 states—Arkansas, Kansas, Montana, and North Dakota. According to Voting Section officials, these 4 states were left off the contractor logs inadvertently, although these officials noted that they were unaware of any calls received from these states. Our analysis found that Voting Section staff recorded having received calls from some of these states.
- Columns that were used to record callers were labeled voter fraud, irregularities, request investigation, re-vote, and general comments. In some of the logs, the columns were re-labeled manually to tally additional types of comments. The broad nature of these column labels to record information about the nature of the calls and the limited narrative sometimes included on logs did not always provide sufficient information to determine whether the Voting Section should initiate an investigation.
- The telephone logs did not include information on callers' contact information such as telephone numbers.

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## Enclosure I

**Assessment of Internal Controls  
November 2000 Election Telephone Logs**

Some of the telephone logs that Voting Section and contractor staff completed included comments indicating allegations that people may have been prevented from voting. According to the Voting Section, Voting Section personnel reviewed logs on an ongoing basis and efforts were made to contact callers who provided telephone numbers and whose messages indicated possible violations of federal civil rights statutes. The Voting Section does not have records indicating how many such return calls were made and noted that return telephone contact information was not always provided or asked for.

According to Voting Section officials, an assessment of the calls led them to determine that most of the calls focused on concerns about the election situation in Florida, often from citizens in states other than Florida, and that few allegations included substantive information about possible violations of federal law. However, the information on the November 2000 telephone logs is not precise enough to document this assessment.

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## Enclosure I

**Assessment of Internal Controls  
November 2002 Election Telephone Logs**

For the November 2002 federal election, the Voting Section assigned staff to receive calls; provided instructions for how to handle calls from citizens, the press, members of Congress, and others; and provided state contact information to refer callers to state officials, when appropriate.

According to Voting Section officials, a telephone log was used to record calls received. The telephone log included columns to record time of call; caller information for name, city, state, and telephone number; subject; and action. No instructions were provided with the telephone log about how to complete it regarding the type of information to be included in the subject or action columns.

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## Enclosure I

	<b>Assessment of Internal Controls Plans for the November 2004 Election</b>
<p>According to the Civil Rights Division, the Voting Section plans to ensure that it has full capability to receive and respond, as appropriate, to all calls related to the November 2004 general election in the most expeditious way possible. Division officials further stated that the Voting Section has procedures in place to track and respond to telephone calls that it might receive in relation to the November 2004 general election.</p> <ul style="list-style-type: none"><li>• Specifically, the Civil Rights Division told us that the Voting Section plans to use a telephone log such as the one used for the November 2002 election to record information on the caller's name, time of call, city and state, telephone number, subject of the call, and action taken on the call. The Division noted that the November 2002 log or any log that the Voting Section might use for the November 2004 election is a tool to ensure that the Voting Section does not miss calls raising important concerns over which it has jurisdiction and is not intended to definitively track all election-related allegations received.</li></ul>	
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## Enclosure I

**Assessment of Internal Controls  
Plans for the November 2004 Election**

The Civil Rights Division also cited other procedures that the Voting Section plans to use to track and respond to possible telephone calls related to the November 2004 general election. These procedures will include the Voting Section

- continuing its practice of assigning its staff to specific states for the purpose of reviewing citizen calls and letters;
- keeping a sufficient number of staff and supervisory attorneys in headquarters on election day to handle calls and to respond to allegations referred from Voting Section staff monitoring elections in the field on that day; and
- using contractors, if needed, to take telephone calls. The Division plans to determine the need to use contractors on a case-by-case basis.

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Conclusions and Recommendations

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## Enclosure I

	<b>Internal Controls Conclusions</b>
<ul style="list-style-type: none"><li>• The Voting Section received an unprecedented number of calls related to the November 2000 election and took steps to document telephone calls. According to the Voting Section, it also documented calls for the November 2002 election for which far fewer calls were received. The 2000 and 2002 election telephone logs differed somewhat in format, and improvements were made regarding how information was collected on the 2002 election telephone log. The Voting Section did not provide written instructions to contractors in November 2000 about how to complete the logs, but did provide written instructions to DOJ staff on completing some of the information for the 2002 logs. However, both logs lack precision for documenting the nature of the call and actions taken because broad categories were used to capture information on the call.</li></ul>	
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Internal Controls  
Conclusions

- Predictions of another close presidential election in November 2004, possible voter confusion over new requirements in the Help America Vote Act, and possible questions regarding voting equipment could result in the Voting Section again receiving a large number of telephone calls and possibly result in the use of contractors to handle calls since most of the Voting Section staff are monitoring election sites on election day. If the Voting Section collects more precise information about such calls, it is in a better position to assure the public that it addressed allegations of voting irregularities; if it documents actions taken more precisely, it is better able to reassure the public and Congress of its commitment to enforce federal voting rights statutes.
- The Voting Section has emphasized the importance of its monitoring of election day activities, yet the monitoring program has not been routinely tracked in the ICM system, its formal process for tracking and managing work activities. Voting Section officials told us they were considering tracking this program in the future, and we believe the significance of this program warrants a more formal tracking of monitoring efforts and resources dedicated to the program.

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	<b>Recommendations</b>
<p>Confidence in election processes is of utmost importance. To help ensure confidence in the integrity of our voting processes, the Voting Section plays an important role in addressing voting irregularities. By accurately recording and documenting its activities in as clear a manner as possible, the Voting Section contributes to assuring the public and Congress of the integrity of our voting processes.</p> <p>To reassure citizens of the integrity of our election processes and to reassure the public and Congress of DOJ's commitment to its responsibility to enforce federal voting rights statutes, we recommend that the Assistant Attorney General for the Civil Rights Division direct the Chief of the Voting Section to</p> <ul style="list-style-type: none"> <li>• develop and implement procedures for the November 2004 election to ensure that the Voting Section has a reliable method of tracking and documenting allegations of voting irregularities and actions taken to address them. Procedures could include more precise categories for recording types of allegations, more precise categories to record actions taken, development of instructions on completing the telephone logs, and development and implementation of training for contractors, should they be needed, and</li> <li>• implement a method to track and report on election monitoring program activities in the Interactive Case Management system.</li> </ul>	
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**Attachment I****Voting Laws Enforced by the Voting Section Relevant to Contents of Briefing and Its Attachments**

According to the Voting Section, to carry out its mission, the Voting Section brings lawsuits against states, counties, cities, and other jurisdictions to remedy denials and abridgements of the right to vote; defends lawsuits that the Voting Rights Act authorizes to be brought against the Attorney General; reviews changes in voting laws and procedures administratively under Section 5 of the Voting Rights Act; and monitors election day activities through the assignment of federal observers under Section 8 of the Voting Rights Act. Provided below are short descriptions of some of the primary voting laws enforced by the Voting Section.

**Voting Rights Act Provisions**

- **Section 2 of the Voting Rights Act (42 U.S.C. § 1973)**

Section 2 of the Voting Rights Act establishes a nationwide ban against any state or local election practices or procedures that deny or abridge a citizen's right to vote on account of race, color, or membership in a language minority group.<sup>4</sup> The Voting Rights Act provides that plaintiffs may establish a violation of Section 2 by demonstrating that "the political processes leading to nomination or election" deny members of the protected classes an equal opportunity to participate in the political process and to elect representatives of their choice. A court, under the Voting Rights Act, may also consider the extent to which members of the protected class have been elected to office in the jurisdiction, though Congress made clear that Section 2 does not confer upon protected classes a right to proportional representation.

- **Sections 203 and 4(f)(4) of the Voting Rights Act (42 U.S.C. §§ 1973aa-1a, 1973b(f)(4))**

Sections 203 and 4(f)(4) are the language minority provisions of the Voting Rights Act and require certain covered jurisdictions to provide bilingual election materials and assistance based on census data pertaining to the population of voting age with limited English proficiency and their rate of illiteracy. With respect to Section 203, the Voting Rights Act requires jurisdictions to provide language minority assistance when certain criteria are met, such as when more than 5 percent of the citizens of voting age or more than 10,000 of the citizens of voting age are members of a single language minority group, and are unable to speak or understand English adequately enough to participate in the electoral process.

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<sup>4</sup> 42 U.S.C. §§ 1973, 1973b(f)(2).

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- **Section 208 of the Voting Rights Act** (42 U.S.C. § 1973aa-6)

Section 208 of the Voting Rights Act authorizes voting assistance for blind, disabled, or illiterate persons. A voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

- **Section 5 of the Voting Rights Act** (42 U.S.C. § 1973c)

Under Section 5 of the Act, "covered"<sup>4</sup> jurisdictions may not change their election practices or procedures until they obtain federal "preclearance" for the change. The act provides for either judicial or administrative preclearance. Under the judicial mechanism, covered jurisdictions may seek declaratory judgment from the United States District Court for the District of Columbia that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. Under the administrative mechanism, covered jurisdictions may seek the same determination from the Attorney General. The Attorney General may deny preclearance by interposing and objection to the proposed change within 60 days of its submission.

- **Section 6 of the Voting Rights Act** (42 U.S.C. § 1973d)

Section 6 of the Voting Rights Act provides for the appointment of federal examiners by order of a federal court or, with respect to certain covered jurisdictions, upon certification by the Attorney General. Federal examiners help to register voters by determining whether a citizen meets state eligibility requirements and must therefore be included in the registration rolls. A federal court, under the Voting Rights Act, may order the appointment of federal examiners to any jurisdiction sued under any statute to enforce certain constitutional voting guarantees.<sup>5</sup> In covered jurisdictions, the Attorney General may appoint examiners upon certification that the Attorney General has received at least 20 meritorious written complaints of voting discrimination or that the Attorney General otherwise believes that the appointment of examiners is necessary to protect voting rights.

<sup>4</sup> The jurisdictions targeted for "coverage" are those evidencing discriminatory voting practices, based upon a triggering formula, as defined in Section 4 of the Voting Rights Act (42 U.S.C. 1973b). The Attorney General and the Director of the Census have responsibility for determining which jurisdictions are covered by the triggering formula, and their determinations are not reviewable in any court and are effective upon publication in the *Federal Register*.  
<sup>5</sup> See also, section 3 of the Voting Rights Act (42 U.S.C. § 1973a).

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- **Section 8 of the Voting Rights Act (42 U.S.C. § 1973f)**

Under Section 8 of the Voting Rights Act, federal observers may be appointed, upon request of the Attorney General, in any jurisdiction where an examiner is serving. Federal observers are to monitor elections and report whether persons entitled to vote were allowed to vote and whether their votes were properly counted.

- **Section 11(b) of the Voting Rights Act (42 U.S.C. § 1973i(b))**

Section 11(b) of the Voting Rights Act prohibits persons, whether acting under color of law or not, from intimidating, threatening, or coercing, or attempting to intimidate, threaten or coerce, any person for voting or attempting to vote. Section 11(b) further prohibits intimidation, threats, or coercion of those persons aiding other persons in voting or exercising certain powers or duties under the Act.

**Uniformed and Overseas Citizens Absentee Voting Act of 1986 (42 U.S.C. §§ 1973ff to 1973ff-6)**

The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), in general, requires states and territories to allow absent uniformed service voters, their spouses and dependents, and certain other overseas voters to register and vote absentee in elections for federal office. UOCAVA requires, for example, that a presidential designee prescribe a federal write-in absentee ballot for all overseas voters in federal elections. The ballot is to be used if the overseas voter applies for, but does not receive, a state absentee ballot.<sup>7</sup> While state law, in general, governs the processing of these federal write-in ballots, UOCAVA requires that states permit their use in federal elections.<sup>8</sup>

**National Voter Registration Act (42 U.S.C. §§ 1973gg to 1973gg-10)**

The National Voter Registration Act of 1993 (NVRA) established procedures designed to "increase the number of eligible citizens who register to vote in elections Federal office," while protecting "the integrity of the electoral process" and ensuring the maintenance of "accurate and current voter registration rolls."<sup>9</sup> NVRA requires all states to adopt certain federal voter registration procedures, except for those states that have no registration requirements or that permit election-day registration with respect to federal elections.<sup>10</sup> NVRA, for example, requires states to allow applicants for driver's licenses to register to vote on the same form.<sup>11</sup> NVRA also requires states

<sup>7</sup> 42 U.S.C. § 1973ff-2(a).

<sup>8</sup> *Id.* § 1973ff-1(3).

<sup>9</sup> 42 U.S.C. § 1973gg.

<sup>10</sup> 42 U.S.C. § 1973gg-2.

<sup>11</sup> *Id.* § 1973gg-3(a).

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to provide voter registration forms and accept completed applications at various state agencies, including any office in the state providing public assistance, any office in the state that provides state-funded disability programs, and other agencies chosen by the state, such as state licensing bureaus, county clerks' offices, public schools and public libraries.<sup>12</sup> NVRA also contains detailed requirements regarding state removal of names from federal registration rolls.<sup>13</sup>

**Voting Accessibility for the Elderly and Handicapped Act of 1984 (42 U.S.C. §§ 1973ee to 1973ee-6)**

Congress has passed legislation intended to improve access for elderly and handicapped individuals to registration facilities and polling places for federal elections. The Voting Accessibility for the Elderly and Handicapped Act of 1984 requires, with some exceptions, that political subdivisions within each state that are responsible for conducting elections assure that polling places and registration sites are accessible to handicapped and elderly voters.<sup>14</sup> If the political subdivision is unable to provide an accessible polling place, it must provide an alternative means for casting a ballot on election day upon advance request by the voter.<sup>15</sup> The act's requirements also include, for example, that each state or political subdivision provide a reasonable number of accessible permanent registration facilities, and that each state make available certain types of voting and registration aids such as large-type instructions and information by telecommunication devices for the deaf.<sup>16</sup>

**Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131 to 12134) (enforced by the Disability Rights Section of the Civil Rights Division)**

Title II of the Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State and local governments. According to the Voting Section, as construed by the courts, Title II requires that polling places be accessible to persons with disabilities with certain exceptions.

**Help America Vote Act (42 U.S.C. §§ 15301 to 15646)**

The Help America Vote Act of 2002 (HAVA), among other things, established a program to provide funds to states to replace punch card voting systems, established the Election Assistance Commission to assist in the administration of federal elections and to otherwise provide assistance with the administration of certain

<sup>12</sup> *Id.* §§ 1973gg-5(a)(2), (a)(3), (a)(4), (a)(6)(A)(i).

<sup>13</sup> *Id.* § 1973gg-6(b).

<sup>14</sup> 42 U.S.C. §§ 1973ee to 1973ee-6.

<sup>15</sup> *Id.* § 1973ee-1(b)(2)(ii).

<sup>16</sup> *Id.* § 1973ee-2, 1973ee-3.

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federal election laws and programs, and established minimum election administration standards for States and units of local government with responsibility for the administration of federal elections. Certain HAVA provisions including those relating to voting system standards, provisional voting and voting information requirements, and computerized statewide voter registration lists are to be enforced by the Attorney General.<sup>17</sup>

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<sup>17</sup> 42 U.S.C. § 15511.

## Attachment II

### Role of the Criminal Division's Public Integrity Section in Federal Elections

The Public Integrity Section (PIN), in conjunction with the 93 U. S. Attorneys and the FBI, is responsible for enforcing federal criminal laws applicable to federal election fraud offenses, among other things. Election fraud is conduct that corrupts the electoral processes for: (1) obtaining, marking, or tabulating ballots; (2) canvassing and certifying election results; or (3) registering voters. Election fraud can be committed with or without the participation of voters. Examples of election fraud that does not involve voter participation are ballot box stuffing, ghost voting, and "nursing home" frauds. Examples of election fraud that involves, at least to some extent, voter participation are vote buying schemes, absentee ballot fraud, voter intimidation schemes, migratory-voting or floating-voter schemes, and voter "assistance" fraud in which the voters' wishes are ignored or not sought. According to a PIN official, its attorneys spend about 10 percent of their time on election fraud investigations and trials.

PIN is also responsible for overseeing the U.S. Attorneys' and the FBI's investigation and prosecution of federal election fraud, one of the most common types of alleged federal election crimes. PIN's oversight entails (1) advising investigators and prosecutors on the application of federal criminal laws to election crimes, (2) reviewing all major election crime investigations and all proposed election crime charges, and (3) assisting with implementing DOJ's District Election Officer (DEO) program. Under the DEO program, PIN asks each of the 93 U.S. Attorneys to appoint an Assistant U.S. Attorney to serve a 2-year term as a DEO and provides training and guidance to DEOs on carrying out their responsibilities. DEOs, whose responsibilities are performed in conjunction with their other responsibilities, are to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.

**Attachment II**

Our analysis of information from PIN on election fraud matters showed that U.S. Attorneys and PIN attorneys initiated a total of 61 election fraud matters, or investigations, related to election years 2000 through 2003. Most of the 61 matters related to elections held in 2002. Matters were initiated in 28 states and 1 U.S. territory (the U.S. Virgin Islands) and ranged from 1 to 7 matters per state/territory over the 4-year period. The most frequent allegations of election fraud were for absentee ballot fraud and vote buying. According to PIN, many of these matters resulted in indictments and subsequent convictions.

According to the Criminal Division, the information provided by PIN does not include all election fraud investigations that the U.S. Attorneys have initiated because (1) U. S. Attorneys are not required to consult with PIN for preliminary investigations as opposed to grand jury investigations, which require consultation; (2) PIN did not track election fraud investigations prior to October 2002; and (3) election fraud investigations are sometimes initiated under non-election statutes.

Attachment III

Election Jurisdictions Monitored during Calendar Years 2000 through 2003

Table 1: Attorney General-Certified Election Jurisdictions Monitored during Calendar Years 2000 through 2003

State	Election jurisdictions monitored during			
	2000	2001	2002	2003
	Hale County		Hale County	
	Selma (Dallas County)*		Chambers County	
	Lowndes County			
Arizona	Apache County		Apache County	
	Navajo County		Navajo County	
Georgia	Randolph County*		Randolph County	
	Brooks County			
	Sumter County			
	Twiggs County			
Louisiana	Tensas Parish			
Mississippi	Aberdeen (Monroe County)*	Clarksdale (Coahoma County)*	Adams County	Greenville (Washington County)
	Bolivar County	Isola (Humphreys County)	Amite County	Humphreys County
	Grenada County	Macon (Noxubee County)	Centerville (Wilkinson County)	Noxubee County*
	Neshoba County	Sunflower (Sunflower County)	Drew (Sunflower County)	Neshoba County
	Newton County			Newton County
		Vicksburg (Warren County)*		Kemper County
		Webb (Tallahatchie County)		Jones County
				Winston County
New York	Kings County	Kings County	Kings County	
	New York County	New York County	New York County	
		Bronx County		
South Carolina	Marion County*	Ridgeville (Dorchester County)	Ridgeville (Dorchester County)*	
Texas	Irving (Dallas County)	Irving (Dallas County)	Titus County	
<b>Total jurisdictions</b>	<b>19</b>	<b>11</b>	<b>13</b>	<b>9</b>

Source: GAO's analysis of election monitoring data provided by DOJ's Voting Section.

\*Elections were monitored by DOJ attorneys and professional staff only, not OPM federal observers.  
 \*Three elections were held in Clarksdale (Coahoma County), Mississippi, in calendar year 2001. Only DOJ attorneys and professional staff monitored one of the three elections, held on June 5, 2001. For the remaining two elections held that year, DOJ attorneys and professional staff accompanied OPM observers in monitoring the elections.

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## Attachment III

Table 2: Court-Ordered Election Jurisdictions Monitored during Calendar Years 2000 through 2003

State	Election jurisdictions monitored during			
	2000	2001	2002	2003
California	Alameda County <sup>a</sup>			
Illinois		Cicero (Cook County)		Cicero (Cook County) <sup>b</sup>
Louisiana				
Michigan	City of Hamtramck	City of Hamtramck	City of Hamtramck	City of Hamtramck
New Jersey	Passaic County	Passaic County	Passaic County	Passaic County <sup>c</sup>
New Mexico	Bernalillo County		Bernalillo County	
	Cibola County		Cibola County	
	Sandoval County		Sandoval County	
	Socorro County		Socorro County	
Pennsylvania		Reading (Barks County) <sup>d</sup>	Reading (Barks County) <sup>d</sup>	Reading (Barks County)
			San Juan County <sup>e</sup>	
Utah	San Juan County <sup>e</sup>		San Juan County <sup>e</sup>	
<b>Total Jurisdictions</b>	<b>8</b>	<b>4</b>	<b>8</b>	<b>4</b>

Source: GAO's analysis of election monitoring data provided by DOJ's Voting Section.

<sup>a</sup>The court order for Alameda County, California, was in effect until January 22, 2001.

<sup>b</sup>Elections were monitored by DOJ attorneys and professional staff only, not OPM federal observers.

<sup>c</sup>A court order for St. Landry Parish was entered into on December 5, 1979. Data from the Voting Section shows that as of August 29, 2003, the court order was still in effect and that no elections were monitored at this parish during calendar years 2000 through 2003.

<sup>d</sup>Four elections were held in Passaic County, New Jersey, in calendar year 2003. Only DOJ attorneys and professional staff monitored one of the four elections, held on May 13, 2003. For the remaining three elections held that year, DOJ attorneys and professional staff accompanied OPM observers in monitoring the elections.

<sup>e</sup>The court order for San Juan County, Utah, was in effect until December 31, 2002.

## Attachment III

Table 3: Other Election Jurisdictions Monitored during Calendar Years 2000 through 2003

State	Election jurisdictions monitored during			
	2000	2001	2002	2003
California			San Francisco County	San Francisco County
Connecticut			Waterbury (New Haven County)	
Florida		Osceola County	Osceola County	
			Duval County	Duval County
			Miami-Dade County	Miami-Dade County
			Century (Escambia County)	
			Orange County	
Georgia	Putnam County		Atlanta (Fulton County)	
Hawaii				Honolulu County
Kentucky				Jefferson County
Louisiana			St. Martinville (St. Martin Parish)	Baker (East Baton Rouge Parish)
			Winnsboro (Franklin Parish)	Tangipahoa Parish
Massachusetts		Lawrence (Essex County)		Lawrence (Essex County)
Michigan	Flint (Genesee County)			
Missouri		St. Louis	St. Louis	St. Louis
New Jersey			Hudson County	
			Middlesex County	
New Mexico	McKinley County*		San Juan County	
New York		Queens County*	Queens County	New York City (Queens County)
		Suffolk County	Suffolk County	Brentwood Union Free School District (Suffolk County)
Ohio		Maple Heights (Cuyahoga County)		
South Carolina	Marion County			
Texas	Forth Worth (Tarrant County)	Bexar County	Kenedy ISD (Karnes County)	Harris County
		Comal County	Seagraves (Gaines County)	Moore County
		Guadalupe County		
<b>Total jurisdictions</b>	<b>5</b>	<b>9</b>	<b>19</b>	<b>13</b>

Source: GAO's analysis of election monitoring data provided by DOJ's Voting Section.

Note: DOJ attorneys and professional staff monitored the election jurisdictions shown in this table unless otherwise noted.

\*OPM federal observers also monitored elections in these counties even though the counties are not under Attorney General-certification or court order.

## Attachment IV

## Summaries of Election-Related Preliminary Investigation, Matters, and Cases Initiated from November 2000 to December 2003

## Election-Related Closed Matters and Open Case Initiated during November or December 2000

No.	Matter/Case	Jurisdiction	Date matter initiated	DJ No.
1	Matter	Florida	December 2000	No*
2	Matter	Hillsborough County, Florida	November 2000	No*
3	Matter	Palm Beach County, Florida	November 2000	Yes
4	Matter	Several counties in Florida	November 2000	Yes
5	Matter	DeKalb County, Georgia	December 2000	Yes
6	Matter	Gwinnett County, Georgia	November 2000	Yes
7	Case	St. Louis, Missouri	November 2000 (case filed in August 2002)	Yes

Source: DOJ Civil Rights Division.

\*For the matters that the Voting Section initiated in Florida after the 2000 election, the Voting Section initially used a general DJ number for all work on investigations and inquiries related to the Florida election. This number was opened in November 2000. Subsequently, the Voting Section assigned separate DJ numbers for individual matters. The 2000 matters in Florida and Hillsborough County, Florida, were inadvertently not given an individual DJ number.

## Summary of Election-Related Closed Matters and Open Case Initiated during November or December 2000

Description based on Voting Section information	Voting Section's actions taken to address allegation	Voting Section's assessment of allegations	Disposition by Voting Section
1. The Voting Section received a large number of complaints alleging that Florida voters arrived at the polls expecting to be properly registered to vote, but were told that their names were not on the voter rolls. Some people who tried to vote but whose names were not on the voter rolls were often told to stand in another line so election officials could be called to verify their registrations, but many voters alleged that office phones were busy all day and registrations could not be verified. Some voters apparently left and some remained at the polls until they were apparently told they could not vote because the polls were closed.	Voting Section staff contacted individuals mentioned in complaints that the NAACP had forwarded to determine the nature of their alleged registration problems. Voting Section staff monitored election-related hearings and lawsuits in Florida to see what steps the state was going to take. The Voting Section reviewed election reform legislation that Florida enacted in 2001.	Interviews by Voting Section staff with individuals mentioned in the complaints did not reveal a distinct pattern of registration problems in any one Florida county sufficient to warrant litigation, but taken as a whole the registration complaints seemed to indicate general problems with the state of compliance with NVRA provisions for clarity and processing of voter registration forms, transmission of the forms to election officials, education of registration personnel, adherence to NVRA registration deadlines, maintenance of registration lists, ability to verify registration at the polls, and education of voters, state registration personnel, election officials, and poll workers.	Florida enacted election reform legislation in 2001 requiring, among other things, that the state implement a statewide voter registration database, permit provisional voting, and provide funds to counties for voter education and poll worker training. The Voting Section reviewed this law under Section 5 of the Voting Rights Act and precleared it on March 28, 2002. With respect to this investigation, the Voting Section noted that these reforms should help address the problems alleged to have occurred in 2000. While the Voting Section further noted that the

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			<p>new state legislation did not appear specifically to address all the NVRA-related issues, such as the voter registration process and education of motor vehicle agency and other state agency employees regarding state registration procedures and requirements in federal law, such issues could be addressed through design and implementation of the forthcoming election procedures to carry out the requirements of the new law. Therefore, the Voting Section determined that it would monitor Florida's NVRA actions in the future in light of the new state legislation and ongoing federal legislative efforts in election reform which might also impact Florida's election procedures.</p> <p>The Voting Section closed the matter because, based on its monitoring of the situation and the provisions in the state law pertinent to registration that had been precleared, it concluded that the problems which occurred in the 2000 election were being adequately addressed.</p>
<p>2. The NAACP National Voter Fund alleged (1) that on Election Day 2000, sheriff's deputies in marked cars in Hillsborough County, Florida, blocked access to a polling place, (2) that their presence</p>	<p>Voting Section staff met with, among others, officials from the county sheriff's office and several local residents, and spoke with a poll watcher to gather additional</p>	<p>The sheriff's office reported that the presence of sheriff's deputies near the polling place was related to a burglary nearby. One of the sheriff's deputies</p>	<p>The Voting Section closed the matter because the complaint lacked merit since there was no evidence on any of the</p>