

EAC Voting Fraud-Voter Intimidation Preliminary Research  
Voter Registration Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court</p>			

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					also granted the individuals' motion to intervene.			

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Voter Eligibility Challenge Cases

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Miller v. Blackwell	United States District Court for the southern District of Ohio	348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894	October 27, 2004	Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order. Two individuals filed a motion to intervene as defendants.	Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in	No	N/A	No

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					<p>the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a</p>			

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					<p>likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The</p>			

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					court also granted the individuals' motion to intervene.			
Spencer v. Blackwell	United States District Court for the Southern District of Ohio	347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062	November 1, 2004	Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.	The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African--American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that	No	N/A	No

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					<p>allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and</p>			

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					<p>County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a</p>			

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					substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the			

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					state on Election Day.			
Charfauros v. Bd. of Elections	United States Court of Appeals for the Ninth Circuit	2001 U.S. App. LEXIS 15083	May 10, 2001	Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.	Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre--election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary	No	N/A	No

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					<p>judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that that treating voters differently based on their political party would violate the Equal</p>			

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					<p>Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed</p>			

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					where defendants' pre--election day voter challenge procedures violated plaintiffs' fundamental right to vote.			
Wit v. Berman	United States Court of Appeals for the Second Circuit	306 F.3d 1256; 2002 U.S. App. LEXIS 21301	October 11, 2002	Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both cities where they resided. The voters appealed the order of the	Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both	No	N/A	No

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				<p>United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.</p>	<p>of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable, nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be</p>			

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					<p>unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over--or under--inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed</p>			

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					discriminatory. Affirmed.			
Curtis v. Smith	United States District Court for the Eastern District of Texas	121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987	November 3, 2000	Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk County, Texas.	Plaintiffs sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the 'escapees'	No	N/A	No

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					<p>residency. These affidavits triggered defendant's action in sending confirmation notices to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction</p>			

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					<p>prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was</p>			

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					granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.			
Peace & Freedom Party v. Shelley	Court of Appeal of California, Third Appellate District	114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42	January 15, 2004	Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of mandate to compel	The trial court ruled that inactive voters were excluded from the primary election. The court of appeals affirmed, observing that although the	No	N/A	No

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				<p>defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</p>	<p>election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to</p>			

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					<p>ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent</p>			

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					<p>certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.</p>			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not	No	N/A	No

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				moved for summary judgment.	afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was			

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					<p>not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and</p>			

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					<p>resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.</p>			

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Charles H. Wesley Educ. Found., Inc. v. Cox	United States Court of Appeals for the Eleventh Circuit	408 F.3d 1349; 2005 U.S. App. LEXIS 8320	May 12, 2005	Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the	The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration	No	N/A	No

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				foundation.	forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the			

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					<p>complaint sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.</p>			
McKay v.	United	226 F.3d	September	Plaintiff	The trial court	No	N/A	No

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Thompson	States Court of Appeals for the Sixth Circuit	752; 2000 U.S. App. LEXIS 23387	18, 2000	challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.	had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it			

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					<p>was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and</p>			

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					<p>immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.</p>			
Nat'l	United	150 F.	July 5,	Plaintiff, national	Defendants	No	N/A	No

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Coalition for Students with Disabilities Educ. & Legal Def. Fund v. Scales	States District Court for the Southern District of Maryland	Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528	2001	organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.	alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not			

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					<p>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</p>			

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					<p>registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended</p>			

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					complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.			
Cunningham v. Chi. Bd. of Election Comm'rs	United States District Court for the Northern District of Illinois	2003 U.S. Dist. LEXIS 2528	February 24, 2003	Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate and two of whom signed	Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were	No	N/A	No

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				<p>nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.</p>	<p>registered voters whose names appeared in an inactive file and whose signatures were therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of</p>			

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					<p>obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for</p>			

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					preliminary relief was denied.			
Diaz v. Hood	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445	October 26, 2004	Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials	The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues: the first had failed to verify her mental	No	N/A	No

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				<p>moved to dismiss the complaint for lack of standing and failure to state a claim.</p>	<p>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</p>			

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					<p>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</p>			

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					prejudice granted.			
Bell v. Marinko	United States District Court for the Northern District of Ohio	235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753	October 22, 2002	Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.	The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA	No	N/A	No

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					<p>claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to</p>			

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					condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for			

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					summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.			
Bell v. Marinko	United States Court of Appeals for the Sixth Circuit	367 F.3d 588; 2004 U.S. App. LEXIS 8330	April 28, 2004	Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause	The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02---which stated that the place	No	N/A	No

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				<p>of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</p>	<p>where the family of a married man or woman resided was considered to be his or her place of residence---- violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research  
 Voter Registration Rejection Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann.</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research  
Voter Registration Rejection Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</p>			

## **FOCUS OF CURRENT RESEARCH**

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

## **PURPOSE OF WORKING GROUP**

Given the preliminary research, your expertise, and EAC's authority under HAVA, provide your ideas as to ---

## **WHERE DOES EAC GO FROM HERE?**

Purpose is **NOT** to debate what other agencies or organizations should or should not be doing.

## **Defining Election Fraud**

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc);
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;

- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

DRAFT

**Determining a Methodology for Measuring Voter Fraud and Intimidation:  
Recommendations of Political Scientists**

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- 1) In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- 2) Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)
  - Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- 3) Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- 4) The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- 5) One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- 6) Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places
  - Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are

more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately

7) Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted

would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- 8) Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches— investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and August 2005, this represents a fraud rate of 0.00000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

2. *Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina’s displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### *3. Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who “voted” in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast

absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.



## **VOTING FRAUD-VOTER INTIMIDATION WORKING GROUP MEETING**

**Thursday, May 18, 2006**

**1:00 PM - 5:30 PM**

**U.S. Election Assistance Commission  
1225 New York Avenue, N.W., 11<sup>th</sup> Floor  
Washington, D.C. 20005**

### **AGENDA**

- |                          |   |
|--------------------------|---|
| <b>1:00 PM - 1:30 PM</b> | <b>Introduction</b><br><br>EAC Authority<br>Overview and Purpose of Current Project<br>Purpose and Members of the Working Group<br>Related EAC Research |
| <b>1:30 PM - 2:00 PM</b> | <b>Review of Preliminary Research</b><br><br>Literature & Reports<br>Interviews<br>News Articles<br>Court Cases   |
| <b>2:00 PM - 3:15 PM</b> | <b>Definition &amp; Findings from Current Project Research</b>  |
| <b>3:15 PM - 3:30 PM</b> | <b>Break</b>  |
| <b>3:30 PM - 5:00 PM</b> | <b>Ideas for Future EAC Activities</b><br><br>Recommended Research Methodologies<br>Consultant Recommendations<br>Working Group Ideas                   |
| <b>5:00 PM - 5:30 PM</b> | <b>EAC Next Steps</b>   |

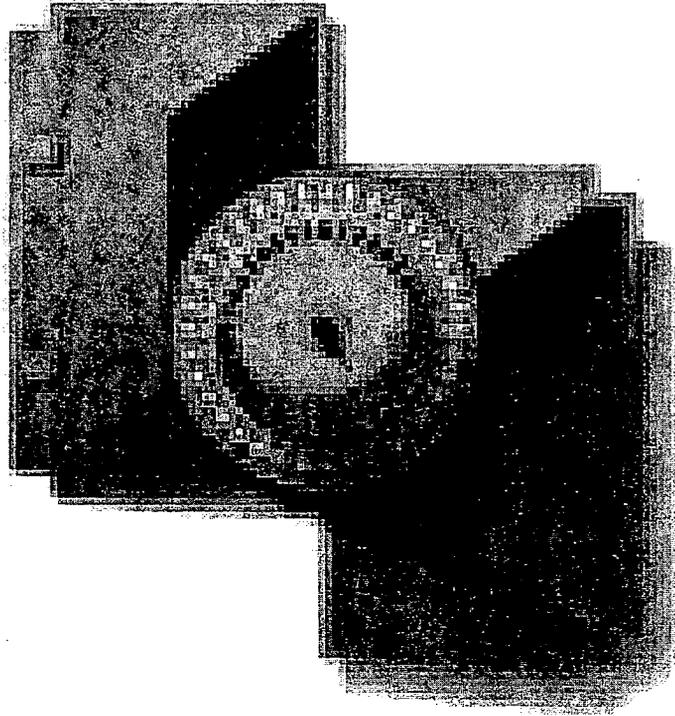
012930

Development of:

- nationwide statistics and methods of identifying, deterring, and investigating ██████████ in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating ██████████ [section 241(b)(7)].

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Federal Government

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# Biographies

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# Practice Areas

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Offices

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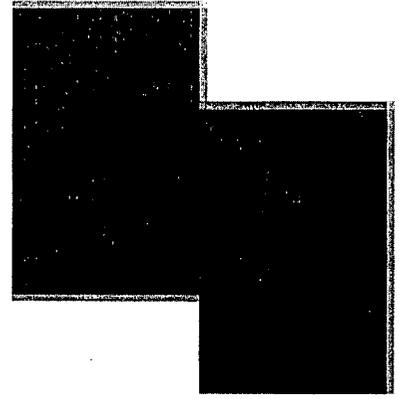
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GOVERNMENT RELATIONS

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# **PATRICK J. ROGERS**

## **PROFESSIONAL EMPLOYMENT**

1988-Present	Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico
1993-1995	Executive Committee, Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico
1983-1988	Associate Attorney, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico
1981-1983	Legislative Assistant to U.S. Senator Harrison H. Schmitt
1976-1981	Land Law Examiner, Bureau of Land Management, Santa Fe, New Mexico and Washington, D.C.

## **EDUCATION**

J.D.	GEORGETOWN UNIVERSITY SCHOOL OF LAW, Washington, D.C. - December, 1981 Dean's List, Law Fellow
B.A.	UNIVERSITY OF NEW MEXICO, December, 1976 Magna Cum Laude Major - Political Science/Economics

## **PROFESSIONAL ORGANIZATIONS/ACTIVITIES**

1997-2002	Mountain States Legal Foundation, Litigation Board of Directors
1991-2003	General Counsel to the New Mexico Republican Party, Executive Committee Member
1993-2000	Counsel to the Bernalillo County Republican Party, Executive Committee Member
1983-Present	Albuquerque Bar Association
1983-Present	New Mexico Bar Association
1983-Present	American Bar Association, Litigation and Trial Sections
1988	Law Day Chairman, State Bar of New Mexico

## **COMMUNITY ACTIVITIES**

2000-2003	Dismas House Board of Directors
1997-2000	Economic Forum Board of Directors
1990-1995	Governor's Organized Crime Prevention Commission
1989-Present	Kiwanis
1985-1998	YABL Basketball Coach; NWRG - Alameda Soccer Coach
1987-1991	Special Assistant District Attorney, Bernalillo County
1989-1991	Metropolitan Court Judicial Selection Committee

## **PRACTICE AREAS (AV Rated Martindale-Hubbell)**

Commercial, Administrative and Constitutional Litigation  
Lobbying: (Representative clients: Newmont Mining Company, Duke Energy North America and Verizon Wireless)

## **PUBLICATIONS**

012941

Survey of the New Mexico Privacy and Related Claims against the Media for the National Libel Research Defense Counsel

Reporters Committee for Freedom of the Press: New Mexico Open Records, Open Meetings and Related Constitutional Issues

New Mexico Reporter=s Handbook on Media Law

Reporters Committee for Freedom of the Press: ATapping Officials= Secrets@

### **ELECTION LAW EXPERIENCE**

*The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures.

*Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge.

*Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues.

*Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues.

*Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues.

*Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues.

*In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

*Larrogoite v. Vigil-Giron and Archuletta*; First Judicial District Court of Santa Fe County, New Mexico (1990); petition challenge, U.S. House of Representatives

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The University of Texas at Austin  
Bachelor of Business Administration

Office Held:

Appointed Guadalupe County Elections Administrator, January 1993.

Credits:

**Certified Elections / Registration Administrator**; August 26, 1998. The Election Center; Professional Education Program.

**Elected President of the Texas Association of Elections Administrators, 1997-1998.**

**Legislative Chairman for Texas Association of Elections Administrators, 1998-1999**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for Presentation Made During the Thirteenth Annual Election Law Seminar.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for "Training Your Judges" Presentation Made During the Fourteenth Annual Election Law Seminar.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for "Creating Your Own Website:" Presentation Made During the Fifteenth Annual Election Law Seminar.**

**Received Certificate of Award, Professional Practices Paper, Elections Center Conference, Boston.**

**Received Certificate of Award, Iacreat Website: Contest, Recognition of Excellence in Category I for Website:**

**Appointed to the Secretary of State's Advisory Panel for the Texas Voter Registration System. (TEAM)**

**Received Certificate of Appreciation from the Secretary of State, Elections Division, for the "Website:" presentation made during the Eighteenth Annual Election Law Seminar.**

**Received Certificate of Award, Professional Practices Paper, Elections Center Conference, Beverly Hills.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division for presentation made during the Twenty First Annual Election Law Seminar.**

**Received Certificate of Appreciation from the Secretary of State, Elections Division for presentation made during the Twenty Third Annual Election Law Seminar.**

**Participated in the U. S. Election Assistance Commission Meeting on improving the collection of Election Data.**

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**Bastrop County**

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**Bexar County**

Elections Administrator  
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**Brewster County**

Elections Administrator  
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Fax: (432) 837-3871

**Calhoun County**

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Benjamin L. Ginsberg represents numerous political parties, political campaigns, candidates, members of Congress and state legislatures, Governors, corporations, trade associations, vendors, donors and individuals participating in the political process.

In both the 2004 and 2000 election cycles, Mr. Ginsberg served as national counsel to the Bush-Cheney presidential campaign; he played a central role in the 2000 Florida recount. He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and National Republican Congressional Committee. He serves as counsel to the Republican Governors Association and has wide experience on the state legislative level from directing Republican redistricting efforts nationwide following the 1990 Census and being actively engaged in the 2001—2002 round of redistricting.

In addition to advising on election law issues, particularly those involving federal and state campaign finance laws, ethics rules, redistricting, communications law, and election recounts and contests, Mr. Ginsberg represents clients before Congress and state legislatures.

Before entering law school, he spent five years as a newspaper reporter on The Boston Globe, Philadelphia Evening Bulletin, The Berkshire (Mass.) Eagle, and The Riverside (Calif.) Press-Enterprise. He has been adjunct professor of law at the Georgetown University Law Center lecturing on law and the political process.

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EAC Voting Fraud-Voter Intimidation Preliminary Research  
Ballot Counting Violation Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.			
Gilmore v. Amityville Union Free Sch. Dist.	United States District Court for the Eastern District of New York	305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116	March 2, 2004	Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.	During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African	No	N/A	No

Deliberative Process  
Privilege

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Ballot Counting Violation Cases

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					<p>American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there a showing of intentional or</p>			

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Ballot Counting Violation Cases

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					<p>purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c--8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c--8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because §</p>			

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					1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot,	The Secretary of State issued a directive to all Ohio county boards of	No	N/A	No

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Ballot Counting Violation Cases

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		4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074		sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.	elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to compel			

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Ballot Counting Violation Cases

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					<p>appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under §</p>			

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					<p>1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.</p>			

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Ballot Counting Violation Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Touchston v. McDermott	United States District Court for the Middle District of Florida	120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS 20091	November 14, 2000	In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.	In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set forth a valid	No	N/A	No

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Ballot Counting Violation Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order and/or</p>			

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Ballot Counting Violation Cases

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					preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.			
Siegel v. LePore	United States District Court for the Southern District of Florida	120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333	November 13, 2000	Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary injunction to	The court addressed who should consider plaintiffs' serious arguments that manual recounts would diminish the accuracy of vote counts due to ballot	No	N/A	No

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Ballot Counting Violation Cases

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				enjoin defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.	degradation and the exercise of discretion in determining voter intent. The court ruled that intervention by a federal district court, particularly on a preliminary basis, was inappropriate. A federal court should not interfere except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional			

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					<p>injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non--discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs'</p>			

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					alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.			
Gore v. Harris	Supreme Court of	773 So. 2d 524;	December 22, 2000	In a contest to results of the 2000	The state supreme court	No	N/A	No

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Ballot Counting Violation Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
	Florida	2000 Fla. LEXIS 2474		presidential election in Florida, the United States Supreme Court reversed and remanded a Florida Supreme Court decision that had ordered a manual recount of certain ballots.	had ordered the trial court to conduct a manual recount of 9000 contested Miami--Dade County ballots, and also held that uncounted "undervotes" in all Florida counties were to be manually counted. The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court released an			

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					<p>opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt adequate</p>			

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					standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.			
Goodwin v. St.	Territorial	43 V.I.	December	Plaintiff political	Plaintiff alleged	No	N/A	No

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Ballot Counting Violation Cases

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Thomas--St. John Bd. of Elections	Court of the Virgin Islands	89; 2000 V.I. LEXIS 15	13, 2000	candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.	that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The			

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Ballot Counting Violation Cases

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					<p>court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election</p>			

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					<p>requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and</p>			

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					<p>ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.</p>			
Shannon v.	United	394 F.3d	January 7,	Plaintiffs, voters	Local election	No	N/A	No

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Jacobowitz	States Court of Appeals for the Second Circuit	90; 2005 U.S. App. LEXIS 259	2005	and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.	inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court.			

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Ballot Counting Violation Cases

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					<p>The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded results were</p>			

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					<p>likely due to an unforeseen malfunction with the voting machine. Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction.</p>			

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					The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.			
GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.	United States Supreme Court	531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087	December 4, 2000	Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings brought by	The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the extent to which	No	N/A	No

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Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>appellees Democratic presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</p>	<p>the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's authority under</p>			

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					Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.			
Touchston v. McDermott	United States Court of Appeals for the Eleventh Circuit	234 F.3d 1130; 2000 U.S. App. LEXIS 29366	November 17, 2000	Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual ballot recounts or	Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential election which	No	N/A	No