

EAC Voting Fraud-Voter Intimidation Preliminary Research
Touch Screen Voting Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				secretary and the registrar summary judgment. The voter appealed.	excluded references to news--paper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found			

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					<p>that the use of touchscreen voting systems was not subject to strict scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non--discriminatory choice to certify touchscreen systems as an</p>			

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					alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.			
Am. Ass'n of People with Disabilities v. Shelley	United States District Court for the Central District of California	324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587	July 6, 2004	Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew	The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch--screen technology. Although it was	No	N/A	No

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				<p>approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four--part test that considers (1) likelihood of success on the merits; (2) the possibility of irreparable injury in the</p>	<p>not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was</p>			

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				absence of an injunction; (3) a balancing of the harms; and (4) the public interest.	comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's			

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					<p>citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests</p>			

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					for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.			
Fla. Democratic Party v. Hood	Court of Appeal of Florida, First District	884 So. 2d 1148; 2004 Fla. App. LEXIS 16077	October 28, 2004	Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida	The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule	No	N/A	No

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				<p>Department of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.</p>	<p>prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if</p>			

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					<p>no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate.</p>			

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					<p>But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was</p>			

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					certified to the supreme court as a matter of great public importance.			
Wexler v. Lepore	United States District Court for the Southern District of Florida	342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344	October 25, 2004	Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const.	The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what	No	N/A	No

014632

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				amends. V and XIV. A bench trial ensued.	constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform,			

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					<p>nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida</p>			

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					law because the manual recount scheme properly reflected a voter's choice. Judgment was entered for the officials. The claims of the congressman, commissioners, and voter were denied.			

EAC Voting Fraud-Voter Intimidation Preliminary Research
UOCAVA Ballot Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
Reitz v. Rendell	United States District Court for the Middle District of Pennsylvania	2004 U.S. Dist. LEXIS 21813	October 29, 2004	Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.	The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other	No	N/A	No

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UOCAVA Ballot Cases

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					<p>overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary.</p>			

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UOCAVA Ballot Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.			
United States v. Pennsylvania.	United States District Court for the Middle district of Pennsylvania	2004 U.S. Dist. LEXIS 21167	October 20, 2004	Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who	The testimony of the two witnesses offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified	No	N/A	No

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UOCAVA Ballot Cases

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				<p>had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.</p>	<p>that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support</p>			

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					<p>a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by</p>			

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					<p>undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1) the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which the nonmoving party</p>			

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					will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.			
Bush v. Hillsborough County Canvassing Bd.	United States District Court for the Northern District of Florida	123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265		The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee	Plaintiff presidential and vice--presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee	No	N/A	No

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UOCAVA Ballot Cases

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				<p>state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.</p>	<p>state ballots and federal write--in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee</p>			

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					<p>voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had</p>			

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					<p>made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign</p>			

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UOCAVA Ballot Cases

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					postmark, or solely because there was no record of an application for a state absentee ballot.			
Harris v. Florida Elections Canvassing Comm'n	United States District Court for the Northern District of Florida	122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875	December 9, 2000	Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.	In two separate cases, plaintiff electors originally sued defendant state elections canvassing commission and state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case	No	N/A	No

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					<p>to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose</p>			

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					irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants			

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					because a Florida administrative rule requiring a 10--day extension in the receipt of overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.			
Romeu v. Cohen	United States District Court for the Southern District of New York	121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842	September 7, 2000	Plaintiff territorial resident and plaintiff--intervenor territorial governor moved for summary judgment and defendant federal,	Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the	No	N/A	No

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				<p>state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee ballot for the upcoming presidential election.</p>	<p>Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial</p>			

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					<p>showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or grant of statehood would enable plaintiff to vote in a presidential election. The</p>			

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UOCAVA Ballot Cases

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					court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional.			
Romeu v. Cohen	United States Court of Appeals for the Second Circuit	265 F.3d 118; 2001 U.S. App. LEXIS 19876	September 6, 2001	Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of	The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
UOCAVA Ballot Cases

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the complaint.</p>	<p>residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such</p>			

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					residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated			

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					identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.			
Igartua de la Rosa v. United States	United States District Court for the District of Puerto Rico	107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146	July 19, 2000	Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in	The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became	No	N/A	No

014705

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UOCAVA Ballot Cases

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				<p>Presidential elections was guaranteed by the Constitution and the International Covenant on Civil and Political Rights.</p>	<p>ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote</p>			

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UOCAVA Ballot Cases

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					<p>by considering them to be within the United States. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential elections. No constitutional amendment was needed. The</p>			

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UOCAVA Ballot Cases

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					<p>present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in</p>			

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UOCAVA Ballot Cases

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					Presidential elections.			

**Rough Summary of Department of Justice, Public Integrity Section Activities,
October 2002-January 2006***

014710

Prosecutions and Convictions-- Individuals

Noncitizen voting: 20
Vote buying: 49
Double voting: 12
Registration fraud: 13
Civil Rights: 4
Voter Intimidation: 2
Unclear: 1

Open Investigations (note: a few cases overlap with prosecutions and convictions)

Noncitizen voting: 3
Vote buying: 25
Double voting: 15
Registration fraud: 29
Absentee ballot fraud: 9
Official: 8
Ineligibles: 4
Deceptive Practices: 1
Civil Rights: 14
Intimidation: 6
Other: 2

Cases and Investigations Closed for Lack of Evidence

Civil Rights: 8
Official: 12
Registration Fraud: 12
Absentee Ballot Fraud: 14
Ineligible Voting: 3
Intimidation: 8
Double Voting: 5
Ballot Box Stuffing: 1
Vote Buying: 14
Ballot/machine tampering: 2
Other: 8
Unclear: 3

*Based upon information available as of January 2006

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
James v. Bartlett	Supreme Court of North Carolina	359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS 146	February 4, 2005	Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.	The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
 Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	387 F.3d 565; 2004 U.S. App. LEXIS 22320	October 26, 2004	Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast	The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>provisional ballots upon affirming their registration to vote in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.</p>	<p>U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was quintessentially about being able to cast a provisional</p>			

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 Provisional Ballot Cases - 2

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					ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered			

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Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					legal votes. Affirmed in part and reversed in part.			
State ex rel. Mackey v. Blackwell	Supreme Court of Ohio	106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074	September 28, 2005	Appellants, a political group and county electors who voted by provisional ballot, 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.	The Secretary of State issued a directive to all Ohio county boards of 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	No	N/A	No

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Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>ballots were not counted. They, together with a political activist group, brought the mandamus action to compel 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 trial court dismissed the complaint, finding that no clear legal right was established</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					under § 1983 to raise the federal-law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					under § 1983 to raise the federal-law claims. Affirmed.			
Fla. Democratic Party v. Hood	United States District Court for the Northern District of Florida	342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720	October 21, 2004	Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.	The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					<p>met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					<p>outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it</p>			

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Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					was cast in the proper precinct under State law.			
League of Women Voters v. Blackwell	United States District Court for the Northern District of Ohio	340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926	October 20, 2004	Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.	The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the			

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EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					<p>identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive,</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					even if the cost, in terms of uncounted ballots, was regrettable.			
Sandusky County Democratic Party v. Blackwell	United States Court of Appeals for the Sixth Circuit	386 F.3d 815; 2004 U.S. App. LEXIS 28765	October 23, 2004	Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.	On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court. The court also held that Ohio Secretary of State Directive	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					<p>2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.			
Hawkins v. Blunt	United States District Court for the Western District of Missouri	2004 U.S. Dist. LEXIS 21512	October 12, 2004	In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the secretary of state and others, moved	The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements.	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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				for summary judgment.	The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional			

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Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					ballot, the voter would first be directed to his proper polling place.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551	October 13, 2004	Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal	The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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				<p>legislation. Defendants filed a motion to transfer venue.</p>	<p>venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

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					governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a			

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Provisional Ballot Cases - 2

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					mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.			
Bay County Democratic Party v. Land	United States District Court for the Eastern District of Michigan	347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872	October 19, 2004	Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a	The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a	No	N/A	No

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
				<p>preliminary injunction and contended that the directives violated their rights under the Help America Vote Act.</p>	<p>provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a</p>			

EAC Voting Fraud-Voter Intimidation Preliminary Research
Provisional Ballot Cases - 2

Name of Case	Court	Citation	Date	Facts	Holding	Statutory Basis (if of Note)	Other Notes	Should the Case be Researched Further
					provisional ballot within his or her jurisdiction was entitled under federal law to have his or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.			

Word Search Terms

When performing a case law word search please use this word list and search both federal and state cases. The & (and) is included as the word search connector. You may have to substitute w/5 (within five words) for example instead of &. I want cases after 2000.

- Election & fraud
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- Vote & fraud
- Voter & challenge
- Vote & challenge
- Election & challenge
- Election & irregularity
- Election & irregularities
- Election & violation
- Election & statutory & violation
- Election & statute & violation
- Election & administration
- Stealing & election
- Election & stealing
- At & the & time & of & the & election
- After & the & election
- Before & the & election
- Election & commissioners
- Election & mandamus
- Election & mandamus & declaratory & judgment
- Election & declaratory & judgment
- Election & theft
- Ballot & box
- Ballot & box & tampering
- Ballot & box & theft
- Ballot & box & stealing
- Paper & ballot
- Paper & ballot & tampering
- Election & officers
- Election & Sheriff
- Over & vote
- Over & votes
- Under & vote
- Under & votes
- Vote & counting
- Vote & count
- Election & counting
- Election & count
- Miscount & votes
- Vote & optical & scan

Election & optical & scan
Election & crime
Election & criminal
Vote & crime
Vote & criminal
Double & voting
Multiple & voting
Dead & voting
Election & counting & violation
Election & counting & error
Vote & counting & violation
Vote & counting & error
Voter & intimidation
Vote & intimidation
Voter & intimidating
Voter & registration
Voter & registration & fictitious & name
Voter & registration & destruction
Vote & registration
Denial & voter & registration
Voter & card
Vote & card
Voter & refuse & vote
Voter & refuse
Vote & refuse
Voter & rolls
Vote & rolls
Voter & identification
Vote & identification
Voter & racial & profiling
Vote & racial & profiling
Voter & racial
Voter & reject
Vote & racial
Vote & reject
Voter & racial & challenge
Vote & racial & challenge
Voter & deny & racial
Vote & deny & racial
Voter & deny & challenge
Voter & deny & reject
Vote & deny & challenge
Vote & deny & reject
Voter & deny & black
Vote & deny & black
Voter & black & challenge

014735

Voter & black & reject
Vote & black & challenge
Vote & black & reject
Voter & black
Vote & black
Voter & deny & African & American
Vote & deny & African & American
Vote & African & American & reject
Voter & African & American & challenge
Voter & African & American & reject
Vote & African & American & challenge
Voter & African & American
Vote & African & American
Election & deny & black
Election & black & challenge
Election & black & reject
Election & black
Election & deny & African & American
Election & African & American
Election & African & American & challenge
Election & African & American & reject
Voter & deny & Hispanic
Vote & deny & Hispanic
Voter & Hispanic & challenge
Voter & Hispanic & reject
Vote & Hispanic & challenge
Vote & Hispanic & reject
Voter & Hispanic
Vote & Hispanic
Election & deny & Hispanic
Election & Hispanic & challenge
Election & Hispanic & reject
Election & Hispanic
Voter & deny & Latino
Vote & deny & Latino
Voter & Latino & challenge
Voter & Latino & reject
Vote & Latino & challenge
Vote & Latino & reject
Voter & Latino
Vote & Latino
Election & deny & Latino
Election & Latino & challenge
Election & Latino & reject
Election & Latino
Voter & deny & Native & American

014730

Vote & deny & Native & American
Voter & Native & American & challenge
Voter & Native & American & reject
Vote & Native & American & challenge
Vote & Native & American & reject
Voter & Native & American
Vote & Native & American
Election & deny & Native & American
Election & Native & American & challenge
Election & Native & American & reject
Election & Native & American
Ballot security & Native & American
Native & American & & vote & suppression
Native & American & vote & suppress
Native & American & disenfranchisement
Voter & deny & Asian
Vote & deny & Asian
Voter & Asian & challenge
Voter & Asian & reject
Vote & Asian & challenge
Vote & Asian & reject
Voter & Asian
Vote & Asian
Election & deny & Asian
Election & Asian & challenge
Election & Asian & reject
Election & Asian
Ballot & security & Asian
Asian & & vote & suppression
Asian & vote & suppress
Asian & disenfranchisement
Voter & deny & Indian
Vote & deny & Indian
Voter & Indian & challenge
Voter & Indian & reject
Vote & Indian & challenge
Vote & Indian & reject
Voter & Indian
Vote & Indian
Election & deny & Indian
Election & Indian & challenge
Election & Indian & reject
Election & Indian
Ballot & security & Indian
Indian & & vote & suppression
Indian & vote & suppress

Indian & disenfranchisement
Poll & tax
Voting & test
Absentee & ballot
Absentee & ballots
Absentee & ballot & deny
Absentee & ballots & deny
Absentee & ballot & reject
Absentee & ballots & reject
Absentee & ballot & count
Absentee & ballots & count
Absentee & ballot & challenge
Absentee & ballots & challenge
Touch & screen & vote
Touch & screen & voting
Motor & Voter & Act
Overseas & ballots
Overseas & ballots & count
Overseas & ballots & deny
Overseas & ballots & reject
Overseas & ballot
Overseas & ballot & count
Overseas & ballot & deny
Overseas & ballot & reject
Military & ballots
Military & ballots & count
Military & ballots & deny
Military & ballots & reject
Military & ballot
Military & ballot & count
Military & ballot & deny
Military & ballot & reject
Electioneering & polls
Electioneering & within & polls
Unregistered & voter
Unregistered & vote
Unregistered & votes
Prevent & vote
Prevent & voter
Prevent & election
Stop & election
Stop & vote
Stop & voter
Delay & election
Delay & vote
Delay & voter

Close & polls
Close & poll
Open & poll
Open & polls
Prevent & close & polls
Prevent & close & poll
Prevent & open & polls
Prevent & open & poll
Vote & legal & challenge
Voter & legal & challenge
Election & legal & challenge
Election & void
Election & reverse
Vote & void
Vote & police
Voter & police
Poll & police
Vote & law & enforcement
Voter & law & enforcement
Poll & law & enforcement
Vote & deceptive & practices
Voter & deceptive & practices
Election & deceptive & practices
Voter & deceive
Voter & false & information
Voter & eligibility
Vote & felon
Vote & ex & felon
Vote & exfelon
Disenfranchisement
Disenfranchise
Law & election & manipulation
Vote & purging
Vote & purge
Registration & removal
Registration & purging
Registration & purge
Vote & buying
Vote & non & citizen
Vote & noncitizen
Voter & non & citizen
Voter & noncitizen
Vote & alien
Voter & alien
Vote & selective enforcement
Identification & selective

Election & accessible
Election & inaccessible
Election & misinformation
Registration & restrictions
Election & administrator & fraud
Election & official & fraud
Provisional & ballot & deny
Provisional & ballot & denial
Affidavit & ballot & deny
Affidavit & ballot & denial
Absentee & ballot & coerce
Absentee & ballot & coercion
Registration & destruction
Poll & worker & intimidation
Poll & worker & intimidating
Poll & worker & threatening
Poll & worker & abusive
Poll & inspector & intimidation
Poll & inspector & intimidating
Poll & inspector & threatening
Poll & inspector & abusive
Election & official & intimidation
Election & official & intimidating
Election & official & threatening
Election & official & abusive
Poll & judge & intimidation
Poll & judge & intimidating
Poll & judge & threatening
Poll & judge & abusive
Election & judge & intimidation
Election & judge & intimidating
Election & judge & threatening
Election & judge & abusive
Poll & monitor & intimidation
Poll & monitor & intimidating
Poll & monitor & threatening
Poll & monitor & abusive
Election & monitor & intimidation
Election & monitor & intimidating
Election & monitor & threatening
Election & monitor & abusive
Poll & observer & intimidation
Poll & observer & intimidating
Poll & observer & threatening
Poll & observer & abusive
Election & observer & intimidation

Election & observer & intimidating
Election & observer & threatening
Election & observer & abusive
Voter & deter
Vote & deterrence
Voter & deterrence
Ballot & integrity
Ballot & security
Ballot & security & minority
Ballot & security & black
Ballot & security & African & American
Ballot & security & Latino
Ballot & security & Hispanic
Vote & suppression
Minority & vote & suppression
Black & & vote & suppression
African & American & vote & suppression
Latino & vote & suppression
Hispanic & vote & suppression
Vote & suppress
Minority & vote & suppress
African American & vote & suppress
Latino & vote & suppress
Black & vote & suppress
Minority & disenfranchisement
African & American & disenfranchisement
Black & disenfranchisement
Latino & disenfranchisement
Hispanic & disenfranchisement
Vote & disenfranchisement
Voter & disenfranchisement
Vote & discourage
Voter & discourage
Vote & depress
Poll & watchers & challenge
Poll & watchers & intimidate
Poll & watcher & intimidating
Poll & watchers & intimidation
Poll & watcher & abusive
Poll & watcher & threatening
Jim & Crow
Literacy & test
Voter & harass
Voter & harassment
Vote & mail & fraud
Poll & guards

Election & consent & decree

Vote & barrier

Voting & barrier

Voter & barrier

014742

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Election & statute & violation
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Stealing & election
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At & the & time & of & the & election
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Election & commissioners
Election & mandamus
Election & mandamus & declaratory & judgment
Election & declaratory & judgment
Election & theft
Ballot & box
Ballot & box & tampering
Ballot & box & theft
Ballot & box & stealing
Paper & ballot
Paper & ballot & tampering
Election & officers
Election & Sheriff
Over & vote
Over & votes
Under & vote
Under & votes
Vote & counting
Vote & count
Election & counting
Election & count
Miscount & votes
Vote & optical & scan

014748

Election & optical & scan
Election & crime
Election & criminal
Vote & crime
Vote & criminal
Double & voting
Multiple & voting
Dead & voting
Election & counting & violation
Election & counting & error
Vote & counting & violation
Vote & counting & error
Voter & intimidation
Voter & intimidating
Vote & intimidation
Voter & registration
Vote & registration
Denial & voter & registration
Voter & card
Vote & card
Voter & refuse & vote
Voter & refuse
Vote & refuse
Voter & rolls
Vote & rolls
Voter & identification
Vote & identification
Voter & racial & profiling
Vote & racial & profiling
Voter & racial
Voter & reject
Vote & racial
Vote & reject
Voter & racial & challenge
Vote & racial & challenge
Voter & deny & racial
Vote & deny & racial
Voter & deny & challenge
Voter & deny & reject
Vote & deny & challenge
Vote & deny & reject
Voter & deny & black
Vote & deny & black
Voter & black & challenge
Voter & black & reject
Vote & black & challenge

Vote & black & reject
Voter & black
Vote & black
Voter & deny & African & American
Vote & deny & African & American
Vote & African & American & reject
Voter & African & American & challenge
Voter & African & American & reject
Vote & African & American & challenge
Voter & African & American
Vote & African & American
Election & deny & black
Election & black & challenge
Election & black & reject
Election & black
Election & deny & African & American
Election & African & American
Election & African & American & challenge
Election & African & American & reject
Voter & deny & Hispanic
Voter & deny & Latino
Vote & deny & Hispanic
Vote & deny & Latino
Voter & Hispanic & challenge
Voter & Latino & challenge
Voter & Hispanic & reject
Voter & Latino & reject
Vote & Hispanic & challenge
Vote & Latino & challenge
Vote & Hispanic & reject
Vote & Latino & reject
Voter & Hispanic
Voter & Latino
Vote & Hispanic
Vote & Latino
Election & deny & Hispanic
Election & deny & Latino
Election & Hispanic & challenge
Election & Latino & challenge
Election & Hispanic & reject
Election & Latino & reject
Election & Hispanic
Election & Latino
Poll & tax
Voting & test
Absentee & ballot

Absentee & ballots
Absentee & ballot & deny
Absentee & ballots & deny
Absentee & ballot & reject
Absentee & ballots & reject
Absentee & ballot & count
Absentee & ballots & count
Absentee & ballot & challenge
Absentee & ballots & challenge
Touch & screen & vote
Touch & screen & voting
Motor & Voter & Act
Overseas & ballots
Overseas & ballots & count
Overseas & ballots & deny
Overseas & ballots & reject
Overseas & ballot
Overseas & ballot & count
Overseas & ballot & deny
Overseas & ballot & reject
Military & ballots
Military & ballots & count
Military & ballots & deny
Military & ballots & reject
Military & ballot
Military & ballot & count
Military & ballot & deny
Military & ballot & reject
Electioneering & polls
Electioneering & within & polls
Unregistered & voter
Unregistered & vote
Unregistered & votes
Prevent & vote
Prevent & voter
Prevent & election
Stop & election
Stop & vote
Stop & voter
Delay & election
Delay & vote
Delay & voter
Close & poll
Open & poll
Open & polls
Close & polls

014746

Prevent & close & polls
Prevent & close & poll
Prevent & open & polls
Prevent & open & poll
Vote & legal & challenge
Voter & legal & challenge
Election & legal & challenge
Election & void
Election & reverse
Vote & void
Vote & police
Voter & police
Poll & police
Vote & law & enforcement
Voter & law & enforcement
Poll & law & enforcement
Vote & deceptive & practices
Voter & deceptive & practices
Election & deceptive & practices
Voter & deceive
Voter & false & information
Voter & eligibility
Vote & felon
Vote & exfelon
Vote & ex & felon
Disenfranchisement
Disenfranchise
Law & election & manipulation
Vote & purging
Vote & purge
Registration & removal
Registration & purging
Registration & purge
Vote & buying
Vote & noncitizen
Vote & non & citizen
Voter & noncitizen
Voter & non & citizen
Vote & selective & enforcement
Identification & selective
Election & accessible
Election & inaccessible
Election & misinformation
Registration & restrictions
Election & administrator & fraud
Election & official & fraud

014747

Provisional & ballot & deny
Provisional & ballot & denial
Affidavit & ballot & deny
Affidavit & ballot & denial
Absentee & ballot & coerce
Absentee & ballot & coercion
Registration & destruction
Poll & worker & intimidation
Poll & worker & intimidating
Poll & worker & threatening
Poll & worker & abusive
Poll & inspector & intimidation
Poll & inspector & intimidating
Poll & inspector & threatening
Poll & inspector & abusive
Election & official & intimidation
Election & official & intimidating
Election & official & threatening
Election & official & abusive
Voter & deter
Vote & deterrence
Voter & deterrence
Ballot & integrity
Ballot & security
Ballot & security & minority
Ballot & security & black
Ballot & security & African & American
Ballot & security & Latino
Ballot & security & Hispanic
Vote & suppression
Minority & vote & suppression
Black & vote & suppression
African & American & vote & suppression
Latino & vote & suppression
Hispanic & vote & suppression
Vote & suppress
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Minority & disenfranchisement
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Vote & disenfranchisement
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Vote & discourage
Voter & discourage
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Poll & watchers & challenge
Poll & watchers & intimidate
Poll & watcher & intimidating
Poll & watchers & intimidation
Poll & watcher & abusive
Poll & watcher & threatening
Jim & Crow
Literacy & test
Voter & harass
Voter & harassment
Vote & mail & fraud
Poll & guards
Election & consent & decree
Vote & barrier
Voting & barrier
Voter & barrier

Interviews

Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
 - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one’s definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
 - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment
- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving

election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

Interview with Douglas Webber, Assistant Indiana Attorney General

February 15, 2006

Background

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7th Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that no one can put his or her thumb on whether there has been voter fraud in Indiana. For instance, if someone votes in place of another, no one knows about it. There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated in the litigation that there are all kinds of examples of dead people voting--totaling in the hundreds of thousands of votes across the country.

One interesting example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solve the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases. It used to be the law that applications for absentee ballots could be sent anywhere. In one, case absentee votes were exchanged for “a job on election day”---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. Several people were prosecuted as a result – those cases are still pending.

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General’s Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General’s Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk’s office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk’s office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's – it requires all first time voters to present identification. In addition, the SURE System – the state's statewide voter registration database – is a great anti-fraud mechanism. The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the 2004 election to make sure it would be smooth. They had attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems. In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is not aware of any voter registration fraud. This is because when someone registers to vote, the administrator does a duplicate check. In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

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Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office. For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on Election Day. The Secretary does not keep track of these cases. Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

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

January 13, 2006

Questions

How are Prosecution Decisions Made?

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an AUSA. Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

Does it Matter if the Complaint Comes from a Member of a Racial Minority?

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

What Kinds of Complaints Would Routinely Override Principles of Federalism?

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office.

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

Other Information

The Department has held four symposia for DEOs and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006 and cases closed for lack of evidence as of January 13, 2006

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. Charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

Felon voters in Milwaukee.

Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

Double voters in a variety of jurisdictions.

The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot

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

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

Nature of Suppression/Intimidation of Native Voters

Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter would come up with no ID, poll monitors would repeat “You can’t vote” over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene.

In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can’t be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

Vote Buying and Fraud

They haven’t found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily

unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

Remedies

As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.

Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.

As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.

Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the absence of those resources, better absentee ballot procedures are needed.

Basic voter registration issues and access are also important in native communities and need to be addressed.

Thompson is mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important. However, she would be willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior. Currently, the parties are aware that no recourse exists, and try to get away with what they will. This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very

little power. Thompson thinks a general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.

Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

Regarding the August 2005 Report

ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner. Mr. Torchinsky stated that there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud. He believes that it is very hard to come up with a measure of voter fraud short of prosecution. Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

Voting Problems

Mr. Torchinsky stated there were incidents of double voting---ex. a double voter in Kansas City, MO. If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.

Mr. Torchinsky believes that voter ID would help, especially in cities in places like Ohio and Philadelphia, PA. The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems---(1) fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places. He also believes that problems could arise in places that still transport paper ballots from the voting location to a counting room. However, he does not believe this is as widespread a problem now as it once was.

Suggestions

Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.

**Interview Sharon Priest, former Secretary of State, Arkansas
January 24, 2006**

Process:

When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim. There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

Data:

There is very little data collected in Arkansas on fraud and intimidation cases. Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.

Most Common Problems

The perception of fraud is much greater than the actual incidence of fraud.

- The DMV does not implement NVRA in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day. Also, some people think they are automatically registered if they have applied for a drivers license.
- Absentee ballot fraud is the most frequent form of election fraud.
- In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them
- In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.
- Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes. Priest has not actually witnessed this happen, but believes it may have.
- Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe

their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.

- Undue challenges to minority language voters at the poll sites
- Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.

Suggested Reforms for Improvement:

- Nonpartisan election administration
- Increased prosecution of election crimes through greater resources to district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be greater centralization of the process, especially with respect to the statewide database. Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, if someone lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.

Interview with Joe Sandler, Counsel to the DNC

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15, 000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

2004-Administrative Incompetence v. Fraud

Sandler believes the 2004 election was a combination of administrative incompetence and fraud. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the country. This was accomplished by mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned. Sandler indicated that in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated most wrongful purging results from incompetence. Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

Fraud and Intimidation Trends

Sandler stated that over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.

At the federal level, Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.

Sandler's Recommendations

Moving the voter lists to the state level is a good idea where carefully done

Provisional ballots rules should follow the law and not be over-used

No voter ID

Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules

Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
3. States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
4. States should adopt legislation to make clear and uniform the rules on voter registration.
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.
7. State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.

8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
10. State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.
12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.