

If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter

registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727.

(2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector.

The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies.

(Effective March 31, 1997)

Minnesota

Sign Name

(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not more than \$10,000, or both."

Minn. Stat. §  
204C.10

(b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth.

(c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots

as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.

(Effective January 1, 2004)  
\* \* \*

Mississippi

Sign Name

Miss. Code  
Ann. § 23-15-  
541

When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was received for by his assistance.

Missouri

Provide ID

Mo. Rev. Stat.  
§115.427.1

(Effective January 1, 1987)

1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list:

- (1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state;
- (2) Identification issued by the United States government or agency thereof;
- (3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri;
- (4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter;
- (5) Driver's license or state identification card issued by another state; or
- (6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose.

(Last amended in 2002)

Montana

Provide ID

Mont. Code.  
Ann. §13-13-  
114(1)(a)

(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter

registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.

(From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [ Unrelated section was amended in 2005])

Nebraska

Sign Name

(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document.

Neb. Rev. Stat.  
§ 32-913

(Last amended in 2003)

Neb. Rev. Stat.  
§ 32-914

Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter.

Nevada

Match Sig.

(Last updated in 2003)

1. Except as otherwise provided in NRS 293.541, if a person's name appears in the election board register or if he provides an affirmation pursuant to NRS 293.525, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2.

Nev. Rev.  
Stat. § 293.277

2. Except as otherwise provided in NRS 293.2725, the forms of identification which may be used individually to identify a voter at the polling place are:

(a) The card issued to the voter at the time he registered to vote;

(b) A driver's license;

(c) An identification card issued by the Department of Motor Vehicles;

(d) A military identification card; or

(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture.

NH

Give Name

Last Amendment Effective Jan. 1, 2004.

A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the

N.H. Rev. Stat.  
Ann.  
659:13

ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

New Jersey

Match Sig.

Last Amendment Effective July 2, 2002.

19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification

N.J. Stat. Ann.  
19:15-17

a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers.

b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery.

c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31-6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31-6.4) shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5).

New Mexico

Sign Name

Last Amendment Effective July 9, 2004

D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.

N.M. Stat. Ann  
§1-5-10  
(Recompiled as  
§1-12 -7.1 by  
L. 2005, Ch.  
270, §63,  
effective July 1,  
2005)

E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot.

G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.

(From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)

New York

Match Sig.

1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith.

N.Y. Law § 8-304  
(McKinney)

2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election.

3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature.

4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record.

5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise

than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same  
Last Amended 1986

North Carolina Give Name

(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

N.C. Gen. Stat.  
Ann. § 163-  
166.7

North Dakota Provide ID

16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook.

N.D. Cent.  
Code § 16.1-  
05-07

1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.

(From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)

Ohio

Match Sig.

When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark.

Ohio Rev. Code Ann. § 3505.18

The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.

Oklahoma

Sign Name.

(Effective at time of last update, 1992 H 182, eff. 4-9-93)

Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry.

Okla. Stat. Ann. tit. 26, § 7-114

(Last amended in 1990)

Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours.

Okla. Stat. Ann. tit. 26, § 7-117

(Last amended in 1990)

Oregon

Match Sig.

All elections in Oregon are Vote by Mail.

Or. Rev. Stat. § 254.385

An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity

(<http://www.uhavavote.org/votingguide/votebymail.html>) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)

Penn.

Match Sig.

(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the

25 Pa. Stat. Ann. § 3050

polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.

(In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))

Rhode Island Give Name

(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form:  
BALLOT APPLICATION

R.I. Gen. Laws  
§ 17-19-24

(Poll List)  
Senatorial District \_\_\_\_\_

Representative District \_\_\_\_\_

Voting District \_\_\_\_\_

Election

Date \_\_\_\_\_

I hereby certify that I am a registered and qualified elector in the above voting district of  
City of

and hereby make application for ballots to be voted at this election.

\_\_\_\_\_  
(Signature of Voter)

\_\_\_\_\_  
(Residence Address)

Number Approved \_\_\_\_\_

(Supervisor of Election)

(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time.

(Last amended 2004, Current through January 2005 Session)

South Carolina Photo ID

§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.

S.C. Code Ann.  
§ 7-13-710

When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5-125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.

South Dakota Photo ID

Last amended: 1968

When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either:

S.D. Codified  
Laws § 12-18-  
6.1

- (1) A South Dakota driver's license or nondriver identification card;
- (2) A passport or an identification card, including a picture, issued by an agency of the United States government;
- (3) A tribal identification card, including a picture; or
- (4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or

technical school, located within the State of South Dakota.

Last amended March 2004

Tennessee

Provide ID

Identification of eligible voters

(a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet.

Tenn. Code  
Ann. § 2-7-  
112

(2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists:

(A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar;

(B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list;

(C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and

(D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission.

Texas

Provide ID

Last amended 2003

(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place.

Tex. Elec. Code  
Ann. § 63.001

Utah

Give Name

(Last amended in 1997)

(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges.

(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.

Utah Code  
Ann. § 20A-3-  
104

(3) If the election judge determines that the voter is registered:

(a) the election judge in charge of the official register shall:

(i) write the ballot number opposite the name of the voter in the official register; and

- (ii) direct the voter to sign his name in the election column in the official register;
- (b) another judge shall list the ballot number and voter's name in the pollbook; and
- (c) the election judge having charge of the ballots shall:
  - (i) endorse his initials on the stub;
  - (ii) check the name of the voter on the pollbook list with the number of the stub;
  - (iii) hand the voter a ballot; and
  - (iv) allow the voter to enter the voting booth.

(In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)

Vermont

Give Name

Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and:

Vt. Stat. Ann.  
tit. 17, § 2563

(1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting.

(2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting

Virginia

Provide ID

(Last amended in 2003)

§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification

Va. Code. Ann.

A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him.

B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.

If the voter's name is found on the pollbook, if he presents one of the forms of

identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth.

Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.

Washington

Sign Name

(Version in effect as of 2004- effective 4/12/2004)  
29A.44.201.

Wash. Rev.  
Code §  
29A.44.201 &  
29A.44.210

A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter.

(In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004)

29A.44.210.

Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

The precinct election officers shall then record the voter's name.

Effective date: July 1, 2004

West Virginia

Match Sig.

(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon.  
\* \* \*

W. Va. Code §  
3-1-34 (a)

(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the

election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

Wisconsin Give Name (In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)  
6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number. Wis. Stat. § 6.79

Wyoming Give Name (In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)  
(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22-15-109, no identification shall be required when:  
(i) Voting in person or by mail after having registered in person; or  
(ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election. Wyo. Stat. Ann. § 22-3-118

(In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)

**APPENDIX B: COURT DECISIONS AND LITERATURE ON VOTER  
IDENTIFICATION AND RELATED ISSUE COURT DECISIONS**

**June 28, 2006**

017684

## **Summary of Relevant Cases:**

### **Challenges Prevailed:**

#### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

- Action for temporary restraining order – granted
- Statute: allowed use of tribal identification cards w/ name, address & photo as a valid identification to register to vote only if the voter lives on the reservation to “complete” a mail-in application (which only affected about 600 voters w/ incomplete applications)
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail, no rational basis for a distinction between Indians residing on reservations and those not
- Statute: may use certain forms of photo identification lacking address together with a utility bill but not tribal identification cards
- Claim -14<sup>th</sup> Amendment EPC: likely to prevail

#### *Greidinger v. Davis, 1993*

- Statute: mandated disclosure of SS # as a precondition to voter registration (rationale was voter identification, but the numbers were rarely used to verify identity & were disclosed in voter lists to both political parties and the public upon request)
- Claims:
  - 14<sup>th</sup> Amendment EPC: no classification (applied strict scrutiny)
  - Substantive due process: law invalid; found that the statute conditioned the fundamental right to vote on the consent to an invasion of privacy; this was found to be a substantial burden (applied strict scrutiny)
    - Compelling interests: preventing voter fraud (deemed compelling)
    - Necessary: fails, preventing voter fraud when allowing names for inspection could be achieved by supplying addresses and DOBs or use of voter registration numbers
    - HOWEVER: Court also made it clear that if the registration scheme kept the SS# for internal use only – it would be valid

### **Challenges Rejected:**

#### *League of Women Voters v. Blackwell, 2004.*

- Sec. of State Directive: provisional ballots issued if first-time voter, who registered by mail and did not provide ID, cannot produce proper ID at the polls AND that the provisional ballot will only be counted if the voter returns to the poll before it closes w/ ID or can recite SS# or DL#
- Claims – Supremacy Clause & HAVA: ruled that HAVA did not specify how the first-time voters' identifications should be verified and this method was not unreasonable or too burdensome

#### *Colorado Common Clause v. Davidson, 2004*

- Statute: required all voters to show ID (most types permitted) before voting
- Claims:
  - HAVA: ruled that HAVA did not preempt more strict state laws & allowed States to be more strict as long as consistent with the purpose of HAVA (both HAVA & CO provisions' purposes were to prevent voter fraud)
  - Substantive due process and equal protection
    - No improper discrimination
    - Preventing voter fraud is a compelling interest since it is irreversible once vote is cast

- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

*McKay v. Thompson, 2000*

- Statute: mandated disclosure of SS # as a precondition to voter registration
- Claims:
  - Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  - NVRA, permitting only min. amt. of info. necessary to prevent duplicate registration and determine eligibility: ruled that NVRA does not specifically forbid the use of SS#s & the Privacy Act specifically permits them pre-75
  - Substantive due process: ruled that internal use of SS# not a burden
  - Free Exercise, based on Bible's supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  - P&I, Article IV: does not protect in-state citizens
  - P&I, 14<sup>th</sup> Amend.: no protection for privilege where Congress authorized its infringement

*Kemp v. Tucker, 1975*

- Statute: required name, occupation, address, sex, race, height, hair color, eye color, and date of birth be listed on voter registration card for identification purposes
- Claims:
  - VRA: ruled that race was not made a "qualification" for voting
  - 15<sup>th</sup> Amendment: ruled that it did not abridge right to vote on account of race because rejection of application was due to failure to provide information, not race; race only one factor in identification
  - 14<sup>th</sup> Amendment EPC: ruled there was no distinction among voters

*Perez v. Riddlehoover, 1966*

- Statute: date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration for identification
- Claims:
  - VRA: ruled that it was not a "test or device" because it applied equally
  - 15<sup>th</sup> Amendment: same reasons

**Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:**

*American Civil Liberties Union of Minnesota v. Kiffmeyer, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004).*

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at \*1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3.

Secondly, the ACLU challenged a second statute which allowed the use of certain photo identification lacking the voter's address to be used together with a utility bill or bank statement as valid identification for registration. *Id.* at \*3. The statute did not, however, permit using a tribal identification for this same purpose. *Id.* The Court ruled that this likely violated the equal protection clause as well. *Id.*

***Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993).**

This case challenged a Virginia law requiring the social security number for voter registration, which the State subsequently disclosed to the public and political parties upon request in voter registration lists, which included the social security numbers. Failure to provide the social security number resulted in the denial of the registration application. The law was challenged under the Equal Protection Clause and under substantive due process. The Court quickly rejected the equal protection challenge because the law made no classification. 988 F.2d at 1350.

The law was invalidated under substantive due process. *Id.* at 1355. The Court found that the statutory scheme conditioned the fundamental right to vote on the consent to an invasion of privacy, based on concerns of identity theft. *Id.* at 1353-54. The Court found this to be a substantial burden on the right to vote. *Id.* at 1354. The Court recognized that the government's interest in preventing voter fraud was compelling. *Id.* However, the Court found that disclosure of the information to the public and political parties was not necessary to achieve that interest. *Id.* Disclosure of addresses or dates of birth would be sufficient to aid the public in distinguishing between two voters with the same name. *Id.* at 1355. The Court did state that required disclosure of the social security number for internal use only would be valid. *Id.* at 1354 n.10.

**Cases in Which the Statute or Practice of Voter Identification Has Been Upheld:**

***League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004).**

The League of Women Voters challenged the Secretary of State's directive that provisional ballots should be issued to all first-time voters who registered by mail without providing identification who cannot show proper identification at the polls. 340 F. Supp. 2d at 828. The Directive also stated that the provisional ballots would only be counted if the voter orally recited his driver's license number or the last four digits of his social security number or returned to the polling place before it closed with some acceptable identification, including reciting those identification numbers. *Id.* The Court stated that HAVA only requires verification of eligibility of first time voters registering by mail; it does not say how that should be done. *Id.* at 831. The Court found the burden on the right to vote to be slight. *Id.* The Directive was found valid under HAVA and the Supremacy Clause because the number of uncounted votes would be small, the requirement was reasonable, and there was adequate notice of the requirement on the registration forms. *Id.* at 829-30.

***Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at \*1 (Colo. Dist. Ct. Oct. 18, 2004).**

In this case, the validity of three Colorado statutory provisions was challenged. The laws (1) required all in-person voters to show identification (not just first-time registrants); (2) provided that votes cast in the wrong precinct would not be counted; and (3) provided that provisional ballots would not be counted if the voter applied for an

absentee ballot. 2004 WL 2360485, at \*1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at \*6.

The challenge to the identification requirement failed under both challenges. The Court interpreted HAVA as not intended to preempt state laws and as permitting states to be more strict than, but not inconsistent with, HAVA. *Id.* at \*10. The Court felt that the purpose of both laws was the same, to reduce voter fraud, and thus, both laws could coexist. As to the Constitutional claim, both equal protection and substantive due process, the Court felt that preventing voter fraud, which is impossible to remedy once a vote is cast, is a compelling interest, and the Court also felt that a voter identification requirement for all voters, with many types of acceptable identification, was only marginally more intrusive than HAVA. *Id.* at 12. The Court also found no improper discrimination between voters. *Id.* Thus, the provision was upheld.

***McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000).**

The Sixth Circuit ruled that the Privacy Act, the National Voter Registration Act, Substantive Due Process, the Privileges and Immunities Clauses (Fourteenth Amendment & Article IV), and the First Amendment right to free exercise do not prohibit requiring disclosure of social security numbers as a precondition to voter registration.

The Privacy Act, Section 7, mandates that it is unlawful for a government to deny a right or privilege because of a citizen's refusal to disclose his social security number, unless the disclosure was required for a system established prior to 1975. 226 F.3d at 755 (citing Privacy Act of 1974, Pub. L. No. 93-579 (1974)). Since Tennessee required social security numbers for voter registration since 1972, his challenge was rejected. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. *Id.* at 755-56 (citing 42 U.S.C. §1973gg-3(c)(2)(B)). The Court rejected this challenge because the NVRA does not specifically forbid the use of social security numbers, and the Privacy Act, a more specific statute, grandfathered their use if prior to 1975. 226 F.3d at 756.

Finally, the plaintiff's constitutional claims were all rejected. His substantive due process claim was rejected because internal receipt and use of social security numbers does not burden the fundamental right to vote. *Id.* The free exercise challenge, based on the Bible's supposed prohibition of universal identifiers, was rejected because the law was generally applicable and not directed at particular religious practices. *Id.* The Privileges and Immunities Clause claim was rejected because the Clause does not apply to citizens of the state. *Id.* The Fourteenth Amendment Privileges and Immunities claim, based on the right to vote as unique to U.S. citizenship, was rejected because the Clause provides no protection where Congress has authorized the infringement. *Id.*

***Kemp v. Tucker*, 396 F. Supp. 737 (M.D. Pa. 1975), *aff'd*, 423 U.S. 803.**

A statute was upheld, which required name, occupation, address, sex, race, height, hair color, eye color, and date of birth to be recorded on the voter registration card and allowed registration officials to reject an incomplete application. 396 F. Supp. at 738. Claims were alleged under the Fourteenth Amendment's Equal Protection Clause, the Fifteenth Amendment, and the Voting Rights Act.

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal

protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of several characteristics required, the Court found that it was intended for preventing voter fraud, not some other motive. *Id.* at 740. As to the VRA, the Court rejected the claim that it added race as a qualification for voting as frivolous. *Id.* As to a Fifteenth Amendment claim that it abridged the right to vote on account of race, the Court also made a distinction between rejecting a voter application because of race and rejecting an application because of failure to answer all relevant questions to assist in preventing voter fraud. *Id.* The statute was upheld.

***Perez v. Rhiddlehoover*, 186 So. 2d 686 (La. Ct. App. 1966).**

A voter registration requirement was challenged and upheld. The statute stated that date of birth, place of birth, mother's first or maiden name, color of eyes, sex, race, occupation, and whether owner, tenant or boarder must appear on the registration. 186 So.2d at 690. This information was required for identification of voters, especially when voters had the same name, to prevent duplicate voting. It was challenged under the Voting Rights Act of 1965 Section 4(a) which prohibits denying the right to vote for failure to comply with a "test or device." The Court felt that this requirement was not a test or device for discrimination because it applied equally. *Id.* at 691. The Court also determined that it was not in conflict with the Fifteenth Amendment either. *Id.*

***Friendly House, et al. v. Janet Napolitano et al.*, CV 04-649 TUC DCB**

On November 30, 2004, the Mexican American Legal Defense and Educational Fund (MALDEF) filed suit seeking to halt the implementation of Proposition 200. Proposition 200 created a number of legal requirements to ensure that public benefits are not available to illegal immigrants. In particular, Proposition 200 requires that a person attempting to register to vote provide one of six specific forms of proof of United States citizenship. Compl. 12-13. Also, any person attempting to vote must present either one form of photo identification or two forms of non-photo identification. *Id.* at 13.

The lawsuit alleges two violations that directly relate to the voting identification restrictions. First, the lawsuit alleges a violation of the Twenty-Fourth and Fourteenth amendments in that a voter must pay a poll tax by spending money to purchase the required identification. *Id.* at 20. Second, the lawsuit alleges violation of the Voting Rights Act. *Id.* at 21. The lawsuit was recently dismissed by the 9th Circuit Court of Appeals for a lack of standing. The Circuit Court found that there was no injury-in-fact, meaning that once an injury occurs the suit will likely be refiled. Additionally, it should be noted that the voter identification issue is only a part of the lawsuit, and much of the focus has been on other aspects of Proposition 200.

### **Current Litigation Concerning Voter ID Issues<sup>1</sup>**

Litigation is filled with uncertainty. Litigation stemming from newly passed voter identification requirements will continue into the foreseeable future. Lawsuits are currently pending over voter identification requirements in Georgia and Indiana. Other states, such as Ohio, are considering new identification requirements that could lead to further litigation. The Georgia lawsuit has already succeeded in getting a preliminary injunction against the law in question, which will likely galvanize interested parties in other states to pursue similar litigation. Of course, if the injunction is eventually overturned at the appellate level it could have a similar chilling affect on future litigation.

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<sup>1</sup> As of January 2, 2006

This summary major litigation pending in Georgia and Indiana includes a brief assessment of the likelihood of success:

**Georgia** (*Common Cause/Georgia v. Billups*):

On September 19, 2005, Common Cause of Georgia, in conjunction with several other non-profit organizations, filed suit in Federal District Court against the Georgia Secretary of State and other election officials, challenging the constitutionality of Georgia's new voter identification requirements. The new law requires all voters attempting to cast a ballot in person to present a valid form of photographic identification. O.C.G.A. § 21-2-417. A voter that is unable to provide proper identification is given a provisional ballot. However, that provisional ballot will be counted only if the voter is able to subsequently present valid identification within two days of the election. *Id.*

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>2</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements. In granting the injunction, the court held that both federal constitutional claims had a substantial likelihood of succeeding on the merits at trial (Prelim. Inj. 96, 104). The court also held that, while the two federal statutory claims were plausible, they both lacked sufficient evidence at the time to have a substantial likelihood of success. (Prelim. Inj. 109,111,116). Finally, the court held that the Georgia constitutional claim would be barred by the Eleventh Amendment to the U.S. Constitution. (Prelim. Inj. 77).

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>3</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

<sup>2</sup> Litigation documents are available at the Election Law @ Moritz website.

<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>3</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

**Indiana (Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board):**

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

The Democratic Party's complaint raises Fourteenth Amendment claims similar to those in the Georgia lawsuit, including concerns about substantially burdening the right to vote, the enactment of a de-facto poll tax from the costs indirectly associated with obtaining ID, and the lack of applicability to voters who cast an absentee ballot. (Second Am. Compl. 6-9). In addition, the complaint alleges that the substantial burden placed on the right to vote violates the First Amendment protection of expressive or symbolic speech, as well as the freedom of association as applied to Democratic primary elections. (Second Am. Compl. 9-10). Finally, the complaint alleges violations of the Voting Rights Act, National Voter Registration Act, and the Help America Vote Act (Second Am. Compl. 10-11). The ICLU's complaint alleges many of the same violations, but also includes claims of a violation of Indiana's constitutional guarantee of a free and equal election system. (Compl. 15)

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>4</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

Unlike the Georgia case, the Indiana lawsuit also claims a violation of the Help America Vote Act. Although the claim is not completely clear, it seems as though the Plaintiffs are arguing that the Indiana statute requires more stringent identification than what is required by HAVA. 42 U.S.C. § 15483(b)(1)-(2). While this is true, it is unclear how this violates the statute. HAVA merely states that certain voters unable to produce HAVA required identification be given a provisional ballot. *Id.* Indiana law meets this requirement. IC § 3-11-8-25.1. Although Indiana law requires more stringent identification for counting the provisional ballot, HAVA leaves these decisions to state law. 42 U.S.C. § 15482(a).

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<sup>4</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

The Honorable Rush Holt  
1019 Longworth Building  
Washington, DC 20515

**Via Facsimile Transmission ONLY**  
**202-225-6025**

RE: October 16, 2006 Letter

Dear Congressman Holt:

Your letter of October 16, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

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"Tova Wang" <wang@tcf.org>

To twilkey@eac.gov

09/27/2006 03:51 PM

cc [REDACTED]

bcc

Subject Board status report

This message has been replied to

Hi Tom,

Got your message. Thanks. Job and I actually did not do the presentation, Peg did. Attached is what she sent to us at the time as what she was presenting, but I was not actually in attendance <<...>>.

Tova

Tova Andrea Wang, Democracy Fellow  
**The Century Foundation**  
1333 H Street, NW, Washington, D.C. 20005

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.



PS EAC Board Status Report.doc

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## INTRODUCTION

### LEGAL AUTHORITY

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

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

### IMPETUS FOR AND FOCUS OF CURRENT RESEARCH

EAC's Board of Advisors recommended that the agency make research on these matters a high priority. In September 2005, the Commission hired two consultants with expertise on these subject matters (Job Serebrov and Tova Wang) to:

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

## PROJECT WORKING GROUP

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.)

The Working Group is scheduled to meet at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud), but excluding campaign finance violations and election administration mistakes. This draft will be discussed by the Working Group and probably refined.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections". Again, this is something that it is hoped will be addressed in the "second phase" of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. Consultants suggest that this gap will be filled in the "second phase" of this EAC project.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## INTERVIEWS

The consultants jointly selected experts from ???

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## 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.

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- 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

## NEWS ARTICLES

Consultants conducted a search of related Nexis articles published between ? and ? The search terms used were jointly agreed upon, and are available upon request. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview provided by the consultants.

### Overview of the Articles

???

### **Absentee Ballots**

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;
- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio and Pennsylvania.

## **"Dead Voters and Multiple Voting"**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made

in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary (attached). There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida,

Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

Phase 2 should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## CASE LAW RESEARCH

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, consultants found comparatively few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### Recommendation

Because so few cases provided a picture of these current problems, consultants suggest that case law research for the second phase of this project concentrate on state trial-level decisions.

## FINAL REPORT

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

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

*EAC Invited Technical Advisor:*

**Craig Donsanto**

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

**Attachment B**

**Rough Summary of Department of Justice**

**Public Integrity Section Activities**

**October 2002-January 2006<sup>1</sup>**

**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

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<sup>1</sup> Based upon information available as of January 2006

**Ballot Box Stuffing: 1**

**Vote Buying: 14**

**Ballot/machine tampering: 2**

**Other: 8**

**Unclear: 3**

Attachment C

**MAJOR VOTE BUYING CASES SUMMARY**

Between 2001 and 2006, allegations and convictions for vote buying and conspiracies to buy votes were concentrated in three states: Illinois, West Virginia and Kentucky.

In East St. Louis, Illinois, nine individuals, including a former city council member and the head of the local Democratic Party, Charles Powell, Jr., were convicted or pled guilty to vote buying and conspiracy to commit election fraud during the 2004 general election. The government's conspiracy case was almost entirely based on taped conversations in which the defendants discussed buying votes for \$5 and whether this would be adequate. Federal prosecutors alleged that the vote buying was financed with \$79,000 transferred from the County Democratic Party shortly before the election, although county officials have not been charged. Four defendants were convicted of purchasing or offering to purchase at least one vote directly, while Democratic Party chairman was only convicted of conspiracy.<sup>2</sup> Earlier, three precinct officials and one precinct worker pled guilty to buying votes for \$5 or \$10 in that same election.<sup>3</sup>

Eastern Kentucky has witnessed a series of vote buying cases over the last several years. The most recent revolved around Ross Harris, a Pike County political fundraiser and coal executive, and his associate Loren Glenn Turner. Harris and Turner were convicted in September 2004 of vote buying, mail fraud, and several other counts.<sup>4</sup> Prosecutors alleged Harris and Turner conspired to buy votes and provided the necessary funds in an unsuccessful 2002 bid for Pike County district judge by former State Senator Doug Hays. Harris supplied nearly \$40,000, Turner laundered the money through straw contributors, and the cash was then disbursed in the form of \$50 checks ostensibly for 'vote hauling', the legal practice of paying campaign workers to get voters to the polls which is notorious as a cover for buying votes.<sup>5</sup> Harris attempted to influence the race on behalf of Hays in order to get revenge on Hays' opponent for a personal matter.<sup>6</sup>

<sup>2</sup> "Five convicted in federal vote-fraud trial" Associated Press, June 30, 2005; "Powell gets 21 months" Belleville News-Democrat, March 1, 2006.

<sup>3</sup> "Four Plead Guilty To Vote-Buying Cash Was Allegedly Supplied By St. Clair Democratic Machine" Belleville News-Democrat, March 23, 2005.

<sup>4</sup> "2 found guilty in pike county vote-fraud case; Two-year sentences possible," Lexington Herald Leader, September 17, 2004.

<sup>5</sup> "Jury weighing vote-fraud case," Lexington Herald Leader, September 16, 2004.

<sup>6</sup> "Pike Election Trial Goes To Jury" Lexington Herald Leader, January 1, 2006.

A grand jury initially indicted 10 individuals in connection with the Harris and Turner case, including Hays and his wife, and six campaign workers. Of the remaining defendants, only one, Tom Varney, also a witness in the Hays case, pled guilty. The others were either acquitted of vote buying charges or had vote buying charges dropped.<sup>7</sup> Prosecutors have announced that their investigation continues into others tied to Harris and may produce further indictments.

The Harris case follows a series of trials related to the 1998 Knott County Democratic primary. Between 2003 and 2004, 10 individuals were indicted on vote buying charges, including a winning candidate in those primaries, Knott County judge-executive Donnie Newsome, who was reelected in 2002. In 2004 Newsome and a supporter were sent to jail and fined. Five other defendants pled guilty to vote buying charges, and three were acquitted. The primary means of vote buying entailed purchasing absentee votes from elderly, infirm, illiterate or poor voters, usually for between \$50 and \$100. This resulted in an abnormally high number of absentee ballots in the primary.<sup>8</sup> Indictments relating to that same 1998 primary were also brought in 1999, when 6 individuals were indicted for buying the votes of students at a small local college. Five of those indicted were convicted or pled guilty.<sup>9</sup>

Absentee vote buying was also an issue in 2002, when federal prosecutors opened an investigation in Kentucky's Clay County after an abnormal number of absentee ballots were filed in the primary and the sheriff halted absentee voting twice over concerns.<sup>10</sup> Officials received hundreds of complaints of vote-buying during the 2002 primary, and state investigators performed follow up investigations in a number of counties, including Knott, Bell, Floyd, Pike, and Maginoff.<sup>11</sup> No indictments have been produced so far.

So far, relatively few incidents of vote-buying have been substantially identified or investigated in the 2004 election. Two instances of vote buying in local 2004 elections have been brought before a grand jury. In one, a Casey County man was indicted for purchasing votes in a local school board race with cash and whiskey.<sup>12</sup> In the second, the grand jury chose not to indict an

<sup>7</sup> "Former state senator acquitted of vote buying," Lexington Herald Leader, November 2, 2004.

<sup>8</sup> "Knott County, KY., Judge Executive sentenced on vote-buying conspiracy charges," Department of Justice, March 16, 2004.

<sup>9</sup> "6 men accused of vote fraud in '98 Knott primary; Charges include vote buying and lying to FBI"

<sup>10</sup> "Election 2002: ABSENTEE BALLOTING; State attorney general's office investigates voting records in some counties" The Courier-Journal, November 7, 2002.

<sup>11</sup> "Election 2002: Kentucky; VOTE FRAUD; Investigators monitor 17 counties across state" The Courier-Journal, November 6, 2002.

<sup>12</sup> "Jury finds man guilty on vote-buying charges" Associated Press, November 11, 2005.

individual accused of offering to purchase a teenager's vote on a local proposal with beer.<sup>13</sup>

An extensive vote buying conspiracy has also been uncovered in southern West Virginia. The federal probe, which handed down its first indictment in 2003, has yielded more than a dozen guilty pleas to charges of vote buying and conspiracy in elections since the late 1980s. As this area is almost exclusively dominated by the Democratic Party, vote-buying occurred largely during primary contests.

The first phase of the probe focused on Logan County residents, where vote buying charges were brought in relation to elections in 1996, 2000, 2002 and 2004. In an extraordinary tactic, the FBI planted the former mayor of Logan City, Tom Esposito, as a candidate in a state legislative race. Esposito's cooperation led to guilty pleas from the Logan County Clerk, who pled guilty to selling his vote to Esposito in 1996,<sup>14</sup> and another man who took money from Esposito for the purpose of vote buying in 2004.<sup>15</sup>

Guilty pleas were also obtained in connection with former county sheriff Johnny Mendez, who pled guilty to buying votes in two primary elections in order to elect candidates including himself. In 2000, with a large amount of funding from a prominent local lawyer seeking to influence a state delegate election for his wife, Mendez distributed around \$10,000 in payments to voters of \$10 to \$100. Then, in the 2004 primary, Mendez distributed around \$2,000 before his arrest.<sup>16</sup> A deputy of Mendez', the former Logan police chief, also pled guilty to a count of vote buying in 2002.<sup>17</sup>

Prosecutors focusing on neighboring Lincoln County have alleged a long-standing vote-buying conspiracy extending back to the late 1980s. The probe identified Lincoln County Circuit Clerk Greg Stowers as head of a Democratic Party faction which routinely bought votes in order to maintain office. Stowers pled guilty in December 2005 to distributing around \$7,000 to buy votes in the 2004 primary. The Lincoln County Assessor, and Stowers' longtime political ally, Jerry Allen Weaver, also pled guilty to conspiracy to buy votes.<sup>18</sup> These were accompanied by four other guilty pleas from party workers for vote buying in primaries. While most specific charges focused on

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<sup>13</sup> "Man in beer vote case files suit" The Cincinnati Enquirer, March 17, 2005.

<sup>14</sup> "Two plead to vote fraud; Logan clerk sold vote; politician tried to buy votes" Charleston Gazette, December 14, 2005.

<sup>15</sup> "Logan man gets probation in vote-fraud scandal" Charleston Gazette, March 1, 2006.

<sup>16</sup> "Mendez confined to home for year Ex-Logan sheriff was convicted of buying votes" Charleston Gazette, January 22, 2005.

<sup>17</sup> "Ex-Logan police sentenced for buying votes" Associated Press, February 15, 2005.

<sup>18</sup> "Clerk says he engaged in vote buying" Charleston Gazette, December 30, 2005.

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vote buying in the 2004 primary, defendants also admitted buying votes as far back as the 1988, 1990, and 1992 primaries.

The leading conspirators would give party workers candidate slates and cash, which workers would then take to the polling place and use to purchase votes for amounts between \$10 and \$40 and in one instance, for liquor. Voters would be handed the slate of chosen candidates, and would then be paid upon exiting the polling place. In other cases, the elected officials in question purchased votes in exchange for non-cash rewards, including patronage positions, fixed tickets, favorable tax assessments, and home improvements.<sup>19</sup>

The West Virginia probe is ongoing, as prosecutors are scrutinizing others implicated during the proceedings so far, including a sitting state delegate, who may be under scrutiny for vote buying in a 1990 election, and one of the Lincoln county defendants who previously had vote buying charges against him dropped.<sup>20</sup>

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<sup>19</sup> "Lincoln clerk, two others plead guilty to election fraud" Charleston Daily Mail, December 30, 2005.

<sup>20</sup> "Next phase pondered in federal vote-buying probe" Associated Press, January 1, 2006.

**Attachment D**

**SUMMARY OF RECENT IRREGULARITIES IN SOUTH DAKOTA,  
WASHINGTON STATE, AND WISCONSIN**

**Summary of South Dakota Election Irregularities in 2002 and 2004**

2002

In fall 2002, one of South Dakota's Senators, Democrat Tim Johnson, was up for re-election, and was engaged in a very close race with his Republican challenger, John Thune. Both parties were engaged in a massive voter registration effort, and registered over 24,000 new voters in the five months between the June primary and the November election, increasing the number of registered voters in the state from around 452,000 to 476,000.<sup>21</sup>

A month before the election, several counties reported irregularities in some of the voter registration documents they'd received. In response to these reports, South Dakota Attorney General, Mark Barnett, with the state US Attorney and the FBI, launched an investigation.<sup>22</sup> Because of the importance of the race in determining the partisan balance of power in the Senate, the voter registration discrepancies got a good deal of national press, including a number of editorials accusing American Indians of stuffing ballot boxes.<sup>23</sup> The following allegations were also picked up by out-of-state newssources, including Fox News and the Wall Street Journal:

- Supporters of Thune, who lost the election by 524 votes, collected 47 affidavits from poll watchers claiming voting irregularities.
- Allegations were made that three individuals were offered money by Johnson supporters to vote.

Barnett, who was alerted to the affidavits when he read an early media report that referred to them, stated that these allegations were either false or didn't warrant concern. "Most of the stuff that's in those other 47 affidavits are the kind of problems that we see in every election. People parking too close to the polling place with a sign in their window, people shooting their

<sup>21</sup> Kafka, Joe. "More people registered to vote." *Associated Press State and Local Wire*. October 29, 2002.

<sup>22</sup> Kafka, Joe. "Voter registration fraud being investigated." *Associated Press State and Local Wire*. October 11, 2002.

<sup>23</sup> "Barnett: No evidence that fraud affected vote." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. November 21, 2002.

017712

mouths off at the polling place. The kind of things that local election officials generally do a pretty good job of policing.”<sup>24</sup> The allegations of voter bribery were false.

Though most of the allegations of fraud that were filed turned out to be false, Attorney General Barnett’s investigation did uncover two cases of voter registration fraud:

- The most high-profile case was that of Becky Red Earth-Villeda. Ms. Red Earth-Villeda was hired by the state Democratic party to register voters on the American Indian reservations. She was charged with 19 counts of forgery. No fraudulent voting was associated with Ms. Red Earth-Villeda, nor was there any evidence that fraudulent voting occurred in the state.<sup>25</sup> All charges were dropped in January 2004, when, in court, it was determined by the state handwriting specialist that Ms. Red Earth-Villeda had not forged the signatures.<sup>26</sup>
- Lyle Nichols. Mr. Nichols was arrested for submitting five forged voter registration cards to his county office. He was working for an organization called the Native American Voter Registration Project, and was paid \$3 for each registration. The five charges were dropped after Mr. Nichols pleaded guilty to possession of a forgery, and was sentenced with 54 days in jail, which is how much time he’d already spent there because of the charges.<sup>27</sup>

## 2004

In October 2004, just before the general election, eight people working for a campus GOP Get-out-the-Vote organization resigned their positions after they were accused of submitting absentee ballot requests that had not been notarized properly. Because many of these ballot requests had already been processed and the ballots themselves had been cast, county auditors decided not to pursue the issue.<sup>28</sup>

Besides this incident, there were no reports of voter registration or voting irregularities in the run-up to the November 2004 election, as there were in

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<sup>24</sup> Kafka, Joe. “Woman charged in voter-fraud case, other claims false.” *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

<sup>25</sup> Kafka, Joe. “Woman charged in voter-fraud case, other claims false.” *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

<sup>26</sup> Walker, Carson. “Charges dropped against woman accused of voter fraud.” *Associated Press State and Local Wire*. Sioux Falls, South Dakota. January 28, 2004.

<sup>27</sup> “Rapid City man arrested for voter fraud.” *Associated Press State and Local Wire*. Rapid City, South Dakota. October 18, 2002.

<sup>28</sup> Melmer, David. “Voting problems resurface in South Dakota.” *Indian Country Today*. October 27, 2004.

2002.<sup>29</sup> However, as with the primary and special elections in June 2004, there were complaints about voter intimidation from American Indians attempting to vote, as well as difficulties with the adoption of the state's new photo identification regulations (after the 2002 election, the state legislature passed more stringent requirements about the kind of identification voters would need to provide at the polls.)

*Incidents:*

**Voter Intimidation:** The Four Directions Committee, an organization dedicated to helping American Indians register to vote and get to the polls, got a temporary restraining order on several Republican supporters who, they alleged, had been setting up video equipment outside of polling places on American Indian reservations and following around American Indians who voted early and recording their license plates. <sup>30</sup>

**Vote Buying:** A Republican election monitor from Virginia, Paul Brenner, claimed that Senator Tom Daschle's campaign was paying people to vote. Local county auditors believe Brenner started the rumor himself. As there was no evidence for either side, the claims were not taken seriously. <sup>31</sup>

**Summary of Election Irregularities in Washington State 2004**

The 2004 Washington state gubernatorial election was decided by one of the narrowest margins in American electoral history; 261 votes – less than a millionth of the 2.8 million votes cast statewide - separated the leading candidate, Republican Dino Rossi, from his competitor, Democrat Christine Gregoire. The state law-mandated recount that followed brought the margin down to 42 votes, and the subsequent hand recount ordered by the state Democratic Party gave Gregoire the lead, with 129 more votes than Rossi.

The race was so close that the parties decided to go to court to dispute the tally – the Republicans wanted the election results set aside and to have a revote; the Democrats sought a court-legitimated win. Each side set out into the field to find a way to swing the election in their favor. The trial and accompanying investigation, which lasted through the spring of 2005, revealed a litany of problems with the state's election system:

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<sup>29</sup> Melmer, David. "Election Day goes smoothly on Pine Ridge, S.D., reservation." *Indian Country Today*. November 10, 2004.

<sup>30</sup> Walker, Carson. "Observer alleges vote buying; worker says he never went to Pine Ridge." *Associated Press State and Local Wire*. October 31, 2004.

<sup>31</sup> Walker, Carson. "Some problems and oddities reported on Election Day." *Associated Press State and Local Wire*. November 2, 2004.

- The process by which absentee ballots are matched to the voters who requested them led to discrepancies between the number of absentee ballots received and the number of votes counted.<sup>32</sup>
- After the final certification of the election results, King County discovered 96 uncounted absentee ballots, Pierce county found 64, and Spokane County found eight; all had been misplaced following the election, but there was no mechanism for reconciling the number of absentee ballots received with the number counted.<sup>33</sup>
- Hundreds of felons who were ineligible to vote were able to cast ballots because they were not aware that they needed to apply to have their voting rights re-instated.<sup>34</sup>
- The system for verifying the eligibility of voters who had cast provisional ballots was found to be questionable.<sup>35</sup>
- Due to poll worker error, about 100 provisional ballots were improperly cast, and a hundred more were counted, though they were not verified as having been cast by eligible voters.<sup>36</sup>

The trial also revealed that most of these problems were the result of understaffing and human error.<sup>37</sup> In total, 1,678 ballots were proven to have been cast illegally, but none of these votes was subtracted from the candidates' totals because no evidence was produced in court as to how each individual voted.<sup>38</sup> Further, despite the scrutiny that the election returns revealed, and the extensive discussion of voter fraud throughout the investigation, just eight cases of voter fraud were discovered:

- 4 people were accused of casting absentee ballots for their deceased spouses.<sup>39</sup>
- A mother and daughter were charged with the absentee ballot of the mother's husband who had died earlier in the year
- 1 man cast the ballot of the deceased prior resident of his home.

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<sup>32</sup> Ervin, Keith. "County elections official demoted; 2004 balloting fallout – Chief predicts 'series of changes'." *The Seattle Times*. June 15, 2005. See also Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

<sup>33</sup> Ervin, Keith. "Voters irked by uncounted ballots." *The Seattle Times*. June 17, 2005.

<sup>34</sup> Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

<sup>35</sup> Roberts, Gregory. "GOP contrasts elections offices; Chelan County's work better than King's, judge in gubernatorial case told." *The Seattle Post-Intelligencer*. May 25, 2005.

<sup>36</sup> Ervin, Keith. "Prosecutors to challenge 110 voters; They are said to be felons – 2 counties discover uncounted ballots." *The Seattle Times*. April 29, 2005.

<sup>37</sup> Ervin, Keith. "King County ballot numbers don't add up; 4000 discrepancies – Review of records finds flaws at each stage of the election; voting, processing, counting." *The Seattle Times*. May 25, 2005.

<sup>38</sup> Borders v. King County. Court's Oral Decision. 6. June. 2005.

<sup>39</sup> Johnson, Gene. "Two plead guilty to voting twice in 2004 general election." *Associated Press*. June 2, 2005.

- A homeless resident of Seattle cast two ballots, one in the name of Dustin Ocoilain.<sup>40</sup>

### Summary of Wisconsin Voting Irregularities November 2004

#### *Instances of Illegal Voting, Milwaukee:*

A probe led by U.S. Attorney Steve Biskupic and Milwaukee County District Attorney Michael McCann found about 200 cases of illegal felon voting and at least 100 cases of other forms of illegal voting in the city of Milwaukee. Of these, 14 were prosecuted:

- 10 were instances of felons voting while on probation or parole:
- 5 are awaiting trial. (one of them is DeShawn Brooks)<sup>41</sup>
- 1 has been acquitted<sup>42</sup>
- 1 has been found guilty in trial (Kimberly Prude)<sup>2</sup>
- 3 have reached plea agreements (Milo Ocasio<sup>43</sup>)
- [names: Ethel M. Anderson, Correan F. Edwards, Jiyto L. Cox, Joseph J. Gooden<sup>44</sup>]
  
- 4 were instances of double voting:
- 1 produced a hung jury (Enrique Sanders)<sup>2</sup>
- 1 was found incompetent to stand trial and his case was dismissed
- 1 initially pleaded guilty but now wants a trial.<sup>45</sup>
- 1 is awaiting trial.

Two of those accused of double voting were driven to multiple polling places in a van, but the identity of the driver of the vehicle is not known, and the DA does not suspect conspiracy.<sup>46</sup>

In addition to these, four people were charged with felonies in the Milwaukee County Circuit Court; two cases were filed against people accused of sending in false registration cards under the auspices of the Association of

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<sup>40</sup> Ervin, Keith. "6 accused of casting multiple votes; King County voters face criminal charges - Jail time, fines possible." *Seattle Times*. June 22, 2005.

<sup>41</sup> Barton, Gina. "Man acquitted in voter fraud trial; Felon had been under supervision at time." *Milwaukee Journal-Sentinel*. October 6, 2005.

<sup>42</sup> Schultze, Steve. "No vote fraud plot found. Inquiry leads to isolated cases, Biskupic says." *Milwaukee Journal-Sentinel*. December 5, 2005.

<sup>43</sup> "Felon says he voted illegally." *Milwaukee Journal-Sentinel*. September 17, 2005.

<sup>44</sup> Barton, Gina. "4 charged with voting illegally in November." *Milwaukee Journal-Sentinel*. August 17, 2005.

<sup>45</sup> Milwaukee J-S. December 5, 2005.

<sup>46</sup> Milwaukee J-S. December 5, 2005.

Community Organizations for Reform Now; the other two were felons who voted illegally.<sup>47</sup>

*Instances of Illegal Voting, Statewide:*

The Legislative Audit Bureau, a nonpartisan research agency, released its analysis of state-wide 2004 election results in September 2005. The agency reviewed the names, addresses, and birthdates of over 348,000 individuals credited with having voted in November 2004, from the electronic voter registration records of 6 cooperating municipalities, and compared them to lists from the Department of Corrections of felons serving sentences on election day, and to lists from the municipalities (to check up on double-voting) and to lists from the US Social Security Administration. LAB's search revealed 105 "questionable" votes:

- 98 ballots cast by ineligible felons, 57 of which were in Madison, 2 in Waukesha, 15 in Eau Claire, 16 in Appleton, 1 in the Village of Ashwaubenon
- 2 instances of double-voting (one in Madison, one in Waukesha).
- 4 votes counted despite the voter's having died two weeks or less before the election.
- 1 case in which a 17-year-old voted in Madison.<sup>48</sup>

The LAB referred the names of these people to the appropriate District Attorney for prosecution, and several cases are awaiting trial.

It should be noted that this study is not a complete survey of election returns state-wide in Wisconsin; the LAB's analysis is based on the voting records of the six municipalities that provided the LAB with sufficient information to conduct this study.

It should also be noted that the LAB discovered significant error in the data provided them by these municipalities, including:

- 91 records in which the individual's birthdate was incorrectly recorded as later than November 2, 1986;
- 97 cases in which a person was mistakenly recorded as having voted twice; and
- More than 15,000 records were missing birthdates, making it more difficult to determine voter eligibility by comparing these records to lists of felons and deceased persons.<sup>49</sup>

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<sup>47</sup> Milwaukee J-S. December 5, 2005.

<sup>48</sup> Borowski, Greg J. "State audit digs up wider vote problems; Thousands of voters on rolls more than once." *Milwaukee Journal-Sentinel*. September 17, 2005

### *General Findings*

Both reports (the Legislative Audit Bureau's and the report of the Joint Task Force on Election Reform convened in Milwaukee) that did in-depth studies of the Wisconsin election returns in 2004 found that there was no evidence of systematic, wide-spread fraud.<sup>50</sup> As the above statistics indicate, there are very few cases in which an individual intentionally voted illegally, and the majority of the discovered instances of fraudulent voting involved felons who were unaware that they were committing a crime. Certainly the number of fraudulent votes, intentional and unintentional, is dwarfed by the amount of administrative error – and the amount of potential there was for fraud.

### *Registration Irregularities*

**Duplicate Registrations:** In the data from the six participating municipalities, LAB found 3116 records for individuals who appear to be registered more than once in the same municipality (0.9% of the records they reviewed). These duplications were primarily the result of name changes, in which the registrar neglected to remove the old name from the registration list, previous addresses that were not deleted, and misspellings and other typographical errors.

**Deceased Voters:** The LAB study found 783 persons who were deceased, but whose records had not been eliminated from the registration lists. Most of the municipalities participating in the survey rely on obituaries and notifications from family members to purge their voter registration lists of deceased voters.

**Felons:** Comparing a list of felons from the Department of Corrections to their voter registration data lists, LAB found 453 felons who were registered to vote. This is largely because, although municipal clerks are informed of federal felony convictions, they have no way of obtaining records on state felony convictions.<sup>51</sup>

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<sup>49</sup> "An Evaluation: Voter Registration." *Legislative Audit Bureau*. Madison, Wisconsin. September 2005. Pg. 50-52.

<sup>50</sup> Brinkman, Phil. "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes." *Wisconsin State Journal*. May 11, 2005.

<sup>51</sup> Legislative Audit Bureau Report: pg 43-47.



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas  
President, People for the American Way Foundation  
2000 M Street, NW  
Suite 400  
Washington, DC 20036

Via Facsimile Transmission ONLY  
202-293-2672

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud – as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

Margaret Sims/EAC/GOV  
10/25/2006 11:59 AM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc ecortes@eac.gov  
bcc  
Subject Re: Question-Voting Fraud-Voter Intimidation Report

Tom:

I sent the consolidated draft of the report last week (minus the Nexis and case law charts) to the lawyers (with a cc: to you), along with the following comments:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.
- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper segeways. I don't know if we should leave it as is, or insert them where needed.

The only comments I've received so far were from Gavin, who said, "I would put forth one point at the outset... if we are creating an EAC report, let create an EAC report. Tova and Job contract employees... I do not see why we can't use all, some or none of their work without footnote or comment."

The series of supporting charts can be found in the shared drawer under **T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Report\Consolidated Copy** in the subfolders marked **Case Charts** and **Nexis Charts**. I continue to work on the formatting of these charts, but at least you and Edgardo can access them. (I would have attached copies to this message, but it would involve too many files.)

We may want to schedule a teleconference on this with the attorneys and Jeannie.

I hope you are feeling better. --- Peggy

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
10/25/2006 10:46 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Question

017720

Deliberative Process  
Privilege

Hi Peggy;

Sorry I missed you yesterday when you were here and hope you are beginning to feel better.

As you know the Voter Fraud and Intimidation Report is causing quite a stir.

Can you give me some ball park timeframe for how long it may take to wrap up our review and get a report to the Commissioners

Is there anything I can do to assist with getting you some help on this.

I know you have other things on your mind but I need to find a way to wrap this up soon.

Also I believe that there were some charts of some sort that were not included in the report we got from Tova and Job, are they available for Edgardo to find so that I may take a look at this.

Thanks so much and hope things are getting better for you.

Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
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017721



## EAGLETON INSTITUTE OF POLITICS

Thomas Wilkey, Executive Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, D.C. 20005  
Mailed and Faxed to (202) 566-3128

October 27, 2006

Dear Tom:

Thank you for faxing me a copy of your October 17th response to Wendy Weiser of the Brennan Center. We are pleased that you have made public the report on Provisional Voting but disappointed that you are not ready to do the same with our report on Voter Identification. We would appreciate knowing approximately when you expect to complete the review and consideration of advisory board concerns you mention to Ms. Weiser.

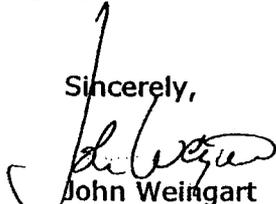
In the meantime, both Eagleton and Moritz plan to place the report on Provisional Voting on our websites along with a paper based on the data compiled for the Voter Identification report. Consistent with your letter faxed to us on August 31st, we plan to include approximately the following language:

"This report on *Best Practices To Improve Provisional Voting* was prepared by the Eagleton Institute of Politics at Rutgers University (Eagleton) and the Moritz College of Law at Ohio State University (Moritz) under contract to the U.S. Election Assistance Commission (EAC). It was submitted to the Commission on June 28th, 2006. Please note that the EAC has not yet made final determinations on the release of any future documents based on this report and its supporting data.

A separate report on *Best Practices To Improve Voter Identification Requirements* was prepared by Eagleton and Moritz under the same contract and also submitted to the EAC on June 28th, 2006. The Commission is currently reviewing this report and has asked that it not be made public until their review is complete. Timothy Vercellotti and David Anderson of Rutgers University's Eagleton Institute of Politics and Political Science Department respectively presented a paper based on the data compiled for this report at the 2006 meeting of the American Political Science Association. The paper, *Protecting The Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout*, can be viewed by clicking here."

We look forward to your response concerning the release of the Voter Identification report. As always, please let us know if need additional information or if there are other ways in which we can be of assistance with your important and difficult work.

Sincerely,

  
John Weingart  
Associate Director

017722

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November 8, 2006

Mr. Tom Wilkey  
Executive Director  
U.S. Election Assistance Commission  
1225 New York Ave., N.W., Suite 1100  
Washington, DC 20005

Re: Request for Records Pursuant to the Freedom of Information Act

Dear Mr. Wilkey:

I write to follow up on the Freedom of Information Act ("FOIA") request I made to the Election Assistance Commission ("EAC") on October 11, 2006 for: (1) the report on voter identification prepared by the Eagleton Institute of Politics and the Moritz College of Law ("the voter ID report"), and (2) the report on voting fraud and voter intimidation prepared by Tova Wang and Job Serebrov, in consultation with a bipartisan work group ("the voting fraud report").<sup>1</sup> Both reports were prepared using federal funds distributed by the EAC and both were finalized and submitted to the EAC several months ago. I received your October 17, 2006 letter and the accompanying EAC status report, EAC board resolutions, and the report on provisional voting prepared by the Eagleton Institute of Politics and the Moritz College of Law. I thank you for the report on provisional voting and the other information, but unfortunately, the material you provided is only partially responsive to my request because it failed to include a copy of the voter ID report and the voting fraud report.

Under FOIA, any federal agency, including the EAC, is required to make records "promptly available to any person" who properly requests them. 5 U.S.C. § 552(a)(3)(A) (2006). If an agency decides to withhold the requested records, it must "immediately notify" the person making the request of the "reasons" for the agency's decision and of the person's right to appeal that decision. *Id.* § 552(a)(6)(A)(i). Your October 17 response, in addition to excluding the requested reports, provided no explanation as to why they were being withheld, as required by federal law. Since there is no basis for the EAC to withhold the voter ID and voting fraud reports, proffered or otherwise, I respectfully appeal your decision to deny access to those reports and also request expedited review.<sup>2</sup> Immediate disclosure of those reports is both in the public interest and within the EAC's statutory mandate to serve as a national clearinghouse on election-related information and to make studies available to the public.

<sup>1</sup> Unlike the usage adopted by the EAC in its October 26, 2006 public meeting, the term "report" in this letter does not refer to a report authored by the EAC or officially approved by the EAC and containing EAC recommendations. Rather, the term should be construed in its ordinary English meaning.

<sup>2</sup> Expedited review of our FOIA request is warranted under 5 U.S.C. § 552(a)(6)(E)(v)(II) (2006).

017723

## Immediate Disclosure of the Requested Reports is in the Public Interest

The information and research contained in the voter ID and voting fraud reports are urgently needed to assist citizens, policymakers, and courts in their ongoing deliberations on issues of the highest public concern. As you are no doubt aware, the issues of voter ID and voting fraud are currently being considered in the courts, in Congress, and in the state legislatures.

Indeed, on October 20, 2006, three days after the EAC denied my request for the voter ID and voting fraud reports, a unanimous United States Supreme Court underscored the need for more research on voting fraud and the effects of voter ID requirements in the context of a case challenging Arizona's new voter ID law.<sup>3</sup> Justice Stevens explained in his concurrence that factual information is needed to determine "the scope of the disenfranchisement that the novel identification requirements will produce, and the prevalence and character of the fraudulent practices that allegedly justify those requirements." The two factual issues identified by the Court are precisely the subjects of the voter ID and voting fraud reports being withheld by the EAC.

Public disclosure of the voter ID and voting fraud reports is important not only to assist the courts in examining the constitutionality of recently-enacted voter ID laws, but also to assist Congress and state legislatures in their deliberations over proposed voter ID legislation. For example, this summer, the U.S. House of Representatives passed a voter ID bill, H.R. 4844, which is currently being considered by the United States Senate. Given the dearth of studies and research on voter ID and voting fraud, the Senate's deliberations would be greatly enhanced by disclosure of the voter ID and voting fraud reports.

Given how quickly the issues of voter ID and voting fraud are being raised in the courts and in the legislatures, the public simply cannot afford any further delay in the release of the highly-anticipated voter ID and voting fraud reports. Scholars, advocates, and policy makers have long awaited the release of these reports, and many have refrained from undertaking similar studies in the interim. Because the data and other research in those reports were gathered over the course of many months, it would be impossible for others to collect similar information in time to inform the public debate.

The requested reports will provide an invaluable contribution to the national discussion on voter ID and voting fraud. Both reports were prepared by nationally-known experts on election administration. The voting fraud study was also prepared in consultation with a bipartisan working group that held a full-day meeting with the EAC and the researchers on May 18, 2006 to discuss the research results.<sup>4</sup> Both reports consumed substantial time and resources: the EAC granted scholars from the Moritz College of Law and the Eagleton Institute of Politics the voter ID research contract in late 2004, and Tova Wang and Job Serebrov the voting fraud contract in September 2005. Both reports contain substantial data collected over many months of research. And, in both cases, the authors prepared and submitted final reports of their research

<sup>3</sup> *Purcell v. Gonzalez*, 549 U.S. \_\_\_, 2006 WL 2988365, at \*3 (2006) (noting that facts are "hotly contested").

<sup>4</sup> U.S. Election Assistance Commission, *Status Report on the Voting Fraud-Voter Intimidation Research Project*, at 11 (May 17, 2006).

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to the EAC several months ago.<sup>5</sup> The EAC is doing the public a disservice by refusing to release these important reports, at least one of which is within its exclusive control, in a timely manner. <sup>+</sup>

Moreover, the EAC's decision to withhold these reports starkly contrasts with the express policies of other federal agencies that distribute public funds for studies. For example, policy of both the National Institutes of Health and National Science Foundation is to disclose as much information as possible so that the public, including other researchers, can examine and benefit from federally-funded research.<sup>6</sup>

The Brennan Center publishes and disseminates reports, publications, and other informational materials to educate individuals, institutions, the press, legislators, and other policymakers on a variety of issues, including issues related to voting and elections. As an organization primarily engaged in disseminating information, the Brennan Center is well-situated to make the information in the voter ID and voting fraud reports available to the public. The Center also intends to make use of the research in those reports to assist in our own research and proposals on issues of national concern.

### **Disclosure of the Requested Reports Is Within the EAC's Mandate**

As you know, the Election Assistance Commission was established by Congress in the Help America Vote Act of 2002 ("HAVA") to "serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections."<sup>7</sup> In other words, the EAC's primary function is to make information available to the public. It is inconsistent with this mission for the EAC to delay the release of valuable research, to suppress research with which some or even all Commissioners disagree, or to withhold research while the EAC determines its own position on the issues addressed by the requested reports.

The requested voter ID and voting fraud reports were prepared at the request of the EAC pursuant to the Commission's statutory duty to "conduct and *make available to the public* studies regarding . . . election administration issues."<sup>8</sup> HAVA specifically mandated the EAC to make available studies concerning "nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office," and "identifying deterring, and investigating methods of voter intimidation," among other things.<sup>9</sup> It was in light of these statutory provisions that the EAC provided federal funding to well-respected experts to conduct research and prepare the voter ID and voting fraud reports. Those same provisions require the EAC to make those reports "available to the public."

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<sup>5</sup> *Cf. id.* ("After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations.")

<sup>6</sup> See Nat'l Insts. of Health, NIH Grants Policy Statement: Availability of Research Results: Publications, Intellectual Property Rights, and Sharing Research Resources (2003), available at [http://grants1.nih.gov/grants/policy/nihgps\\_2003/NIHGPs\\_Part7.htm#\\_Availability\\_of\\_Research](http://grants1.nih.gov/grants/policy/nihgps_2003/NIHGPs_Part7.htm#_Availability_of_Research); Nat'l Science Found., Policies & Important Links, available at <http://www.nsf.gov/policies/foia.jsp>.

<sup>7</sup> 42 U.S.C.S. § 15322 (2006).

<sup>8</sup> 42 U.S.C.S. § 15381(a) (2006) (emphasis added).

<sup>9</sup> *Id.* § 15381(b)(6) - (7).

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In short, by withholding the requested reports, not only does the EAC violate the broad disclosure provisions of FOIA, discussed more fully below, but it also shirks its statutory responsibility to be a source of public information regarding election administration.

### **There is No Basis in Law for the EAC to Withhold the Requested Reports**

Under FOIA, the EAC is required to disclose all requested documents within its control unless they fall into one of the enumerated statutory exemptions.<sup>10</sup> These exemptions are very narrowly construed, because “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”<sup>11</sup> Moreover, to qualify for an exemption, the EAC is required to explain its reasons for withholding a document with specificity.<sup>12</sup> The EAC has simply not satisfied its burden of showing that the voter ID and voting fraud reports qualify for an exemption. Indeed, it cannot.

#### *The Withheld Reports Do Not Qualify for a FOIA Exemption*

Despite the fact that you gave no reason for the EAC’s decision to withhold the requested documents, based on your counsel’s statement at the Commission’s public meeting held on October 26, 2006,<sup>13</sup> we assume that you intend to assert the deliberative process privilege under Exemption 5 of FOIA. That exemption, however, applies only to: (a) intra-agency memoranda that are both (b) predecisional, and (c) deliberative.<sup>14</sup> The voter ID and voting fraud reports meet none of these criteria. Neither report can be said to reveal the decision-making or thought processes of the Commission in any way—which is the essence of the deliberative process privilege. That privilege does not apply here for three independent reasons.

First, although the requested reports are within the EAC’s exclusive control, they cannot be withheld as “intra-agency” memoranda because they were independently prepared by experts outside of the EAC. The mere receipt of federal funds to perform research does not transform an outsider into an arm of the agency.<sup>15</sup> We do not dispute that, under certain circumstances, persons outside an agency can so actively participate in an agency’s policymaking process that they are appropriately considered part of the agency. But in this case, the report authors were essentially grantees whose work product lacked the “extensive, detailed, and virtually day-to-day supervision” that “convert[s] the acts of the [fund] recipient from private acts to governmental acts.”<sup>16</sup>

<sup>10</sup> 5 U.S.C. § 552(a)-(b); *U. S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-46 (1989) (documents over which agency obtains control are covered by FOIA).

<sup>11</sup> *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); see also *Klamath*, 532 U.S. at 8; *id.* at 9 (purpose of exemptions “is not to protect Government secrecy pure and simple”).

<sup>12</sup> 5 U.S.C. § 552(a); see also *Parke, Davis & Co. v. Califano*, 623 F.2d 1, 6 (6th Cir. 1980) (holding that “specificity and detail” are required in support of an Exemption 5 claim).

<sup>13</sup> See [http://www.eac.gov/public\\_meeting\\_102606.asp](http://www.eac.gov/public_meeting_102606.asp).

<sup>14</sup> *Nat’l Council of La Raza v. U.S. Dep’t of Justice*, 411 F.3d 350, 356 (2d Cir. 2005).

<sup>15</sup> *Forsham v. Harris*, 445 U.S. 169, 180 (1980); see also *Missouri v. U.S. Dep’t of Interior*, 297 F.3d 745, 750 (8th Cir. 2002).

<sup>16</sup> *Forsham*, 445 U.S. at 180.

017726

Second, the withheld reports are not “predecisional” because they were not prepared to assist the EAC in making a policy decision, but rather were commissioned pursuant to the agency’s statutory obligations under HAVA to disseminate studies.<sup>17</sup> Predecisional documents are those “prepared in order to assist an agency decisionmaker in arriving at his decision.”<sup>18</sup> They are typically drafts or “suggestions or recommendations as to what agency policy should be,” or “advice to a superior,” or “suggested dispositions of a case.”<sup>19</sup> A document is only predecisional if the agency can demonstrate that the document is related to a specific decision confronting the agency. Here, however, “[n]o ‘decision’ is being made or ‘policy’ being considered”<sup>20</sup> in connection with the voter ID and voting fraud reports. The EAC did not fund those reports with the expectation that the reports would effectuate policies with the force of law or complete an adjudicatory process. Instead, the reports are “resource opinion[s]” about a state of facts completely unrelated to a tangential policy decision that the EAC may make.<sup>21</sup> As a result, they are not predecisional. To the extent that the EAC claims that the reports relate to “a decision that possibly may be made at some undisclosed time in the future,” that is an insufficient basis to withhold them under Exemption 5.<sup>22</sup>

Third, the withheld reports are not “deliberative” because they do not “reflect[] the give-and-take of the [agency’s] consultative process.”<sup>23</sup> The requested reports cannot become exempted from disclosure merely because the EAC is reviewing them.<sup>24</sup> A document is deliberative if its disclosure is likely “to stifle honest and frank communication within the agency.”<sup>25</sup> There is no danger that disclosure of the voter ID and voting fraud reports would stifle the agency’s communications, since they were prepared independently of the EAC and thus cannot reveal anything about any deliberations or candid communications within the EAC.

### *The Preparation of an EAC Report is no Justification for Withholding the Requested Reports*

The EAC is obligated under FOIA and HAVA to disclose the requested reports regardless of whether it intends to write its own report on voter identification, as your letter suggests.<sup>26</sup>

<sup>17</sup> See 42 U.S.C.S. § 15381.

<sup>18</sup> *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 184 (1975); see also *Nat'l Council of La Raza*, 411 F.3d at 356; *Nat'l Ass'n of Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002); *Carter v. U.S. Dep't of Corr.*, 307 F.3d 1084, 1089 (9th Cir. 2002); *Ethyl Corp. v. U.S. Envtl. Prot. Agency*, 25 F.3d 1241, 1248 (4th Cir. 1994); *Fl. House of Representatives v. U. S. Dep't of Commerce*, 961 F.2d 941, 945 (11th Cir. 1992).

<sup>19</sup> *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Assembly of Cal. v. U.S. Dep't of Commerce*, 968 F.2d 916, 921 (9th Cir. 1992).

<sup>23</sup> *Coastal States*, 617 F.2d at 866.

<sup>24</sup> The DC Circuit has also rejected an interpretation of predecisional that “would result in a huge mass of material being forever screened from public view,” because “[t]he public has an interest in decisions deferred, avoided, or simply not taken for whatever reason, equal to its interest in decisions made, which from their very nature may more easily come to public attention than those never made.” *Vaughn v. Rosen*, 523 F.2d 1136, 1146 (D.C. Cir. 1975).

<sup>25</sup> *Coastal States*, 617 F.2d at 866.

<sup>26</sup> It is unclear as to why the EAC’s intent to write a report on voter identification would have any bearing on the EAC’s decision to withholding of the fraud report. Likewise, the inaccuracies in the provisional voting report alleged in your October 17 letter are wholly immaterial to the issue of whether the reports on voter ID and voting fraud should be disclosed. In any event, while inaccuracies may explain why the EAC would choose not to adopt a particular report, it is insufficient to support withholding the documents under FOIA. See *Petroleum Info. Corp. v. U.S. Dep't of Interior*, 976 F.2d 1429, 1437 n.10 (D.C. Cir. 1992) (holding risk of public confusion “does not

Neither the voting fraud report nor the voter ID report could “inaccurately reflect or prematurely disclose the views of the agency,”<sup>27</sup> because both reports were written and reviewed by scholars outside the EAC and submitted to the EAC in final form. Factual material that does not reveal an agency’s deliberative process is not protected under Exemption 5,<sup>28</sup> nor are expert opinions that do not reflect the agency’s own deliberations concerning its own decision- or policy-making.<sup>29</sup> Moreover, the mere fact that the EAC might rely on information in the voter ID or voting fraud reports to issue its own report does not transform those reports into deliberative agency materials. As the United States Court of Appeals for the D.C. Circuit explained,

[A]nyone making a report must of necessity select the facts to be mentioned in it; but a report does not become a part of the deliberative process merely because it contains only those facts which the person making the report thinks material. If this were not so, every factual report would be protected as a part of the deliberative process.<sup>30</sup>

### *Any Segregable Information Must Be Released*

Irrespective of any claimed exemptions, the EAC is under an obligation to release any “reasonably segregable” nonexempt information to requestors.<sup>31</sup> Both the voter ID and voting fraud reports are unlikely to reveal anything about the deliberative process of the EAC, and to the extent that either does, those limited portions can be excised and the balance of the reports released.

### **Additional FOIA Request**

In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited

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support a blanket exemption for information marred by errors”); *Assembly of Cal.*, 968 F.2d at 923 (“[I]t is not among FOIA’s functions to control the use of disclosed information.”); *Carter v. U.S. Dep’t of Commerce*, 186 F. Supp. 2d 1147, 1154 (D. Or. 2001) (“the determination of whether the rejected data is predecisional does not turn on the articulated reasons for its rejection) (internal quotation and citation omitted), *aff’d*, 307 F.3d 1084 (9th Cir. 2002); *Assembly of California v. U.S. Dep’t of Commerce*, 797 F. Supp. 1554, 1565-67 (D. Cal. 1992) (holding that information expressly prepared for public disclosure cannot be withheld under FOIA because it was ultimately rejected), *aff’d*, 968 F.2d 916 (9th Cir. 1992).; *see also Burka v. U.S. Dep’t of Health & Human Servs.*, 87 F.3d 508, 521 (D.C. Cir. 1996) (future publication of agency report is an insufficient justification for asserting an Exemption 5 privilege under FOIA).

<sup>27</sup> *Coastal States*, 617 F.2d at 866.

<sup>28</sup> *Local 3, Int’l Bhd. of Electrical Workers v. NLRB*, 845 F.2d 1177, 1180 (2d Cir. 1988).

<sup>29</sup> *Parke, Davis & Co.*, 623 F.2d at 6.

<sup>30</sup> *Playboy Enters., Inc. v. U. S. Dep’t of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982) (remanding for the lower court to order disclosed investigative facts within a report the government wanted to withhold in its entirety).

<sup>31</sup> 5 U.S.C. § 552(b).

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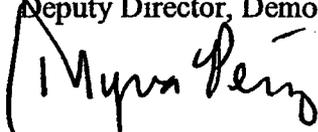
to outside reviewers. The public undoubtedly has a right to know under FOIA what the EAC is "up to."<sup>32</sup>

Thank you for your attention to this matter. Because the country is making decisions concerning voter ID and voting fraud today, we trust that you will respond as soon as possible, and no later than in two weeks.

Sincerely,



Wendy R. Weiser  
Deputy Director, Democracy Program



Myrna Pérez  
Counsel

cc.

Hon. William H. Frist, United States Senate Majority Leader  
Hon. Harry Reid, United States Senate Minority Leader  
Hon. Dennis J. Hastert, Speaker of the House  
Hon. Nancy Pelosi, Minority Leader, United States House of Representatives  
Hon. Trent Lott, Chair, Senate Rules Committee  
Hon. Christopher Dodd, Ranking Member, Senate Rules Committee  
Hon. Vernon Ehlers, Chair, House Administration Committee  
Hon. Juanita Millender-McDonald, Ranking Member, House Administration Committee  
Chair Paul DeGregorio, U.S. Election Assistance Commission  
Commissioner Gracia Hillman, U.S. Election Assistance Commission  
Commissioner Donetta Davidson, U.S. Election Assistance Commission  
Lloyd Leonard, League of Women Voters of the United States

<sup>32</sup> *Assembly of Cal.*, 968 F.2d at 923 (citing *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)).

017729

To: Members of the United States Election Assistance Commission  
Cc: Thomas Wilkey, Executive Director, and Julie Thompson Hodgkins, General Counsel, Election Assistance Commission  
From: Tova Andrea Wang  
Re: Project on Voter Fraud and Intimidation  
Date: December 7, 2006

As one of the consultants and authors of the report on voter fraud and intimidation released by the Election Assistance Commission today, I am writing to request that the EAC restore the information that has been altered and removed from the research report we submitted to the EAC in July, 2006.

Job Serebrov and I spent over a year and hundreds of hours working on the report on voter fraud and voter intimidation in a bipartisan and highly effective manner. The report we wrote was a reflection of the detailed and laborious research we did over these many months. Unfortunately, the report the EAC released today does not fully reflect our research and the report of our findings submitted to the EAC in July, 2006.

After being unable to get any action taken on the report for months, I learned very recently that the General Counsel of the EAC would be taking responsibility for "revising" the report. On November 15 of this year I requested that Job Serebrov and I be permitted to review any revisions or changes made by EAC staff to the draft we submitted. We both offered to work collaboratively and cooperatively with EAC staff to ensure that the document produced was the most informative and useful product possible. This request was denied. Again, on November 29, 2006, upon learning that the report was to become public at an upcoming EAC meeting, I requested in writing that Job Serebrov and I be at least allowed to see embargoed copies of the report to be released before that December 7, 2006 meeting. That request was denied. On December 4, 2006 I offered to sign a confidentiality agreement whereby I would agree not to discuss the report before its public release. That request was also denied.

It is my understanding that with other research reports for which the EAC has contracted consultants there has been a process of give and take between the consultants and the EAC staff and commissioners prior to public release of the report. The consultants in this instance were repeatedly denied that opportunity, leading to today's result.

The issues around voter fraud and intimidation are controversial, making it all the more necessary that the research around it be as free from politics as possible. That is why the EAC made this project a bipartisan effort, with a bipartisan team of consultants and a bipartisan working group to inform and advise us on our work.

The EAC has a statutory obligation to provide the Congress and the American public the best research, data and guidance it can. Knowledge about the extent and nature of voter fraud and intimidation is fundamental to ensuring the right of every eligible American to vote and that every legitimate vote is counted.

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**Deliberative Process  
Privilege**

I hope the EAC will reconsider its actions of today and release the report that was written by the consultants so that the Congress and the voters can engage in an informed and honest discussion about one of the most serious issues confronting our democracy today.

Please respond to this request by Monday, December 11. Thank you for your timely consideration.

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**"Thomas O'Neill"**  
<tom\_oneill@verizon.net>  
02/06/2007 03:42 PM

To bbenavides@eac.gov  
cc  
bcc

Subject Voter ID Presentation --Eagleton/Moritz

History: This message has been replied to and forwarded.

Bert,

Attached is the text of the presentation that Tim Vercellotti and I will make to the EAC on Thursday, February 8. Thanks for your help in making arrangements for this meeting. Please let me know if you need anything else from us in advance of the meeting.

See you Thursday.

Tom O'Neill



VIDPresentation020807.doc

017732

**Presentation to the  
U. S. Election Assistance Commission  
February 8, 2007**

**Summarizing a report on  
Best Practices to Improve Voter Identification Requirements  
Pursuant to the  
HELP AMERICA VOTE ACT OF 2002  
Public Law 107-252  
Submitted on June 28, 2006**

**by  
The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University**

**Thomas M. O'Neill  
Project Director  
And  
Tim Vercellotti  
Assistant Research Professor  
Assistant Director, Center for Public Interest Polling**

**Eagleton Institute of Politics  
Rutgers, The State University of New Jersey**

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## Introduction

Our report, submitted to the EAC last June, provided information on voter identification practices in the 2004 election. It made recommendations for best practices to evaluate future proposals for voter ID requirements. In particular, we recommended a concerted, systematic effort to collect and evaluate information on voter ID requirements and turnout from the states. This report was a companion to our report on Provisional Voting, submitted to the EAC in November 2005.

The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. Unfortunately, our colleagues from Moritz could not be with us today because of teaching obligations.

Our work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election.

Voter ID requirements are just one set of election rules that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen chooses whether to vote by comparing costs and benefits. The benefits of voting are fairly stable --and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit may be, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decreases.

We conducted our research before last year's election, when the debate over voter ID requirements was sharp and polarized. We took seriously our charge from the EAC, which was not to enter the national debate, but rather to explore if an empirical study could suggest how we might estimate the effects of different voter ID requirements on turnout. That analysis, of course, would be a sensible first step to assess tradeoffs between ballot security and ballot access and provide valuable information for all parties to the debate.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the net integrity of the ballot may not have been improved.

A key part of our work was a statistical analysis to examine how turnout may vary under different voter identification requirements. We used this statistical study to develop a model to illuminate the relationships between voter ID requirements and turnout. The model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

Tim Vercellotti led that phase of our research and will describe his methods and conclusions.

## Results of Statistical Analysis

Our research included an examination of variation in turnout based on voter ID requirements in the 50 states and the District of Columbia. We examined this question using aggregate data at

the county level gathered from the U.S. Census and other sources, and individual-level data from the November 2004 Current Population Survey.

Drawing from the research conducted by the Moritz College of Law, we were able to classify the states into one of five voter ID categories. Voters either had to:

1. state their name,
2. sign their name,
3. match their signatures to those already on file,
4. provide a non-photo ID,
5. provide a photo ID.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity. The five categories for minimum requirements were:

1. stating one's name,
2. signing one's name,
3. matching one's signature to a signature on file,
4. providing a non-photo identification, or
5. swearing an affidavit.

Analysis of the aggregate data showed that the average turnout in states requiring photo identification as a maximum requirement was 58.1 percent compared to 64.2 percent in states that required voters to give their name as the maximum requirement. The differences were slightly smaller when we examined states in terms of their minimum requirements, with 60.1 percent of voters turning out in states that required an affidavit compared to 63 percent in states that required voters to give their name as the minimum requirement.

The analyses of aggregate data also included models that controlled for other factors that might influence turnout, such as whether a county was in a presidential battleground state, the length of time between the close of the registration period and Election Day, and the demographic composition of the county in terms of race and ethnicity, age, and household income. Controlling for those factors, the maximum requirements of providing a signature match or a non-photo identification showed a negative effect on voter turnout when compared to counties in states that only required voters to give their names. None of the voter identification requirements showed an effect on turnout, however, in the model that coded counties according to the states' minimum requirements.

Analyses of the individual-level data from the November 2004 Current Population Survey also indicated relationships between voter ID requirements and turnout. Controlling for contextual factors, such as whether a voter resided in a presidential battleground state, and demographic characteristics, such as a voter's gender, race, ethnicity, age, and education, the data showed that registered voters in states that require photo identification as a maximum requirement were 2.9 percent less likely to say they had voted compared to registered voters in states that required voters to state their names. Examining states within the context of minimum identification requirements showed that registered voters in states requiring affidavits were four

percent less likely to say they had voted compared to registered voters in states that required individuals to give their names at the polling place.

Breaking down the Current Population Survey sample by race and ethnicity also revealed interesting patterns. Photo identification and affidavit requirements were negatively associated with whether white registered voters said they voted compared to their counterparts in states requiring registered voters to give their names. But African-American, Hispanic, and Asian-American registered voters in states that required photo identification as the maximum requirement or an affidavit as the minimum requirement were no less likely to say they had voted than their racial or ethnic counterparts in states that simply required voters to give their names.

The most consistent difference emerged in states that required non-photo identification as a maximum or a minimum requirement. In five of six statistical models, African-American, Hispanic, and Asian-American registered voters in non-photo identification states were less likely to say they had voted in November 2004 than their racial or ethnic counterparts in states that required voters to state their names as a maximum or minimum identification requirement.

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This observation does not answer the question as to why photo identification requirements did not have a more uniform effect across groups in 2004. Of course, photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement. But the finding that photo identification requirements were associated with a lower probability that white registered voters said they had voted, and the absence of a similar relationship within other racial and ethnic groups, runs counter to concerns expressed by some in the debate over voter ID. This finding points up the need for further research in this area, perhaps with a view to comparing turnout rates over time before and after a photo identification requirement takes effect, to further isolate potential relationships between photo ID requirements and turnout.

In examining the link between voter identification requirements and turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements.

### Conclusions from the Research

The statistical analysis suggests that stricter voter ID requirements can be associated with lower turnout. It was not designed, however, to look at the other side of the balance equation: do tighter ID requirements reduce multiple voting or voting by ineligible voters? The scope of our research as defined by the EAC excluded assessing the dynamics and incidence of vote fraud.

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We believe, however, that sound policy on voter ID should begin with an examination of the tradeoffs between ballot security and ballot access.

The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs. The EAC's recent study<sup>1</sup> of election crimes found, for example, that there has never been a comprehensive, nationwide study of voting fraud and intimidation.

Without a better understanding of the incidence of vote fraud and its relationship to voter ID, for now best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility. Election law should provide the clarity and certainty needed to forestall destabilizing challenges to election outcomes. Absent a sound, empirical basis for striking a wise balance between voter ID and ballot access, legal challenges may increase, not just to the process but to electoral outcomes.

The analysis of litigation conducted by the Moritz College of Law for our research suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting Social Security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents.

To strike that balance requires a more precise understanding of how voter ID requirements affect turnout. A first step in that direction would be to encourage or require states to collect and report additional data, including:

- The reasons potential voters are required to cast a provisional ballot and
- The reasons for rejecting provisional ballots.

#### Recommendations for consideration and action by the EAC

1. Encourage or sponsor further research to clarify the connection between voter ID requirements and the number of potential voters able to cast a ballot that is counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements. The analysis will help focus the attention of the public and policy-makers on the tradeoff between ballot access and ballot security. A "Voter Impact Statement," to be drafted and offered for public review and comment before the adoption of new identity requirements, would estimate the number and demographics of:
  - Eligible, potential voters who may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and
  - Assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

The data collection and analysis recommended in this report would help make feasible an empirically-based assessment of the effects on voter participation of proposed identification requirements. That assessment could improve the quality of the debate on this polarizing topic.

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<sup>1</sup> U. S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study*, December 2006.

3. Encourage or require the states to collect and report reliable, credible information on the relationship between ballot access and ballot security. A compilation by EAC of this information would provide a factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
4. Encourage or require states to sponsor surveys of voters to be conducted by local election officials. Such surveys would determine why those who cast a provisional ballot were found ineligible to cast a regular ballot and illuminate the frequency with which ID issues divert voters into the provisional ballot line. The connection between Voter ID requirements and provisional ballots is, of course, close. Voters who lack required ID will likely vote provisionally, thus placing greater demands on a system that may be hard pressed to meet those demands. Asking voters what they know about ID requirements would also provide useful context for evaluating the effect of those requirements on electoral participation.<sup>2</sup>
5. Recommend as a best practice that state election officials conduct spot checks on how the identification process actually works at polling places. These spot checks could provide information on how closely actual practice tracks statutory or regulatory requirements.
6. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In 11 states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots, and the safe harbor provision in presidential elections.

#### A final thought

A voting system that requires voters to produce an ID may prevent the ineligible from voting. It may also prevent some eligible voters from casting a ballot. If the ID requirements block a few ineligible voters from the polls at the cost of preventing an equal or greater number of eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and what form that requirement should take) will weigh value judgments as well as available factual evidence. We did our work on the premise that increased understanding of the facts relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

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<sup>2</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it.

We hope that premise is realistic, and we also hope that this research has helped the Commissioners and the interested public to clarify their thinking on this polarizing topic.

On behalf of the Eagleton – Moritz research team, we thank you for the opportunity to contribute to the national debate.



Committee on Rules and Administration  
United States Senate  
Washington, DC 20510  
202-224-6352  
Fax (Main) 202-224-5400  
Fax (Minority) 202-224-3036  
Fax (Audit) 202-224-1912

CCS  
GH  
RR  
CH  
JT  
GG  
JL  
TW  
KLD

Date: April 13, 2007  
To: Donetta Davidson, EAC Chairman  
From: Howard Gantman, Staff Director  
Subj: Letter to Commission  
Phone Number Called: (202) 566-3127  
No. of Pages including Cover: 6

Comments:

Please find attached a letter from Senators Feinstein and Durbin.

**United States Senate**

**WASHINGTON, DC 20510**

**April 12, 2007**

**The Honorable Donetta Davidson  
Chairman  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W.  
Suite 1100  
Washington, DC 20005**

**Dear Commissioner Davidson:**

**We are writing to seek a response to very troubling news reports that included allegations that the Commission may have altered or delayed release of two taxpayer-funded studies of election issues for political purposes.**

**While the Commission is within its rights to decide what guidance it issues to election officials, it is critical that its actions are not perceived as politically motivated and it is imperative that you provide full documentation about the Commission's proceedings on these matters.**

**On Wednesday, the *New York Times* reported that a bipartisan team of election law experts hired by the Commission to research voter fraud in federal elections found that there was little such fraud around the nation, but the Commission revised the report to say that the pervasiveness of voter fraud was still open to debate.**

**On Monday, *Roll Call* reported that the Commission two weeks ago rejected the findings of a report, prepared as part of a \$560,000 contract with Rutgers University's Eagleton Institute and Ohio State University's Moritz College of Law. That report found that voter identification laws may reduce election turnout, especially by minorities.**

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Commissioner Davidson

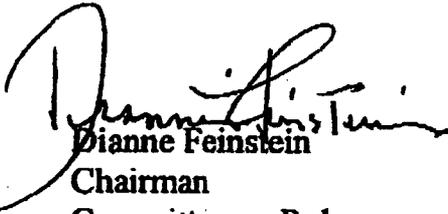
- 2 -

April 12, 2007

It is imperative that the Commission's actions and deliberations are unbiased, free from political influence and transparent. While the Commission does not have to agree with the experts who perform its research, it should make the research available unfettered and unfiltered.

Attached are a series of questions, we would like the Commission to address. We look forward to your timely response.

Sincerely,



Dianne Feinstein  
Chairman  
Committee on Rules  
and Administration



Richard J. Durbin  
Chairman  
Subcommittee on Financial  
Services and General  
Government  
Committee on Appropriations

We request information and documentation from the Commission that answer the following questions:

**COMMISSION'S OVERSIGHT ON EAGLETON CONTRACT TO PERFORM A STUDY ON VOTER IDENTIFICATION**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Would you please provide a copy of the approved Request For Proposals, as well as any contract modifications that were agreed to between the Commission and Eagleton Institute and subcontractors?
3. Can you provide the names and qualifications of Election Assistance Commission staff that worked on the Eagleton Institute project?
4. Please indicate how many project meetings occurred during the term of the Eagleton contract, including in-person meetings, conference calls regarding the status of the report, and any meeting where Commissioners were present for at least part of the meeting. Please provide copies of any minutes from those meetings.
5. Please identify the names and affiliations of members of the Peer Review group or groups that examined the Eagleton Institute drafts. Please also indicate the dates upon which any such review of the Eagleton research was conducted, and the specific concerns or complaints that were raised by members of the Peer Review group as to either the analysis or statistical methodology, if any. Please provide copies of any minutes from those meetings.
6. If certain members of the Peer Review groups had concerns with the data or methodology of the Eagleton study, was that information communicated to Eagleton, and were any changes made to the study based on Peer Review group concerns with methodology or data?
7. Who were the individuals (and what were their academic qualifications) that advised the Commission that the data, methodology, or the results of the Eagleton Contract were so flawed that the Commission should reject the report? At what point did the Commission receive input from those individuals?

8. The Commission previewed its research on the Eagleton Institute's study on Provisional Voting at its May 2006 Advisory Board meetings—why was the Voter Identification Draft Study not discussed at that time? What is the status of the Provisional Voting report?
9. In rejecting the Eagleton report, the Commission indicated concerns that there was only one year's worth of data. Given that this was the first year that Commission had studied the results, isn't "one year" what was originally contemplated in the Eagleton contract? Isn't the reason for having a major research institute conduct this study is so they can draw initial assessments from that data—even though that data can be augmented in future years? Because of the rejected report, will the Commission start anew for research in the 2008 elections?
10. What was the final, total cost of the Eagleton contract, and what was produced or released by that Commission as a result of that contract?

#### **COMMISSION'S OVERSIGHT OVER VOTER FRAUD/INTIMIDATION STUDY**

1. Did the Commissioners or Commission senior staff receive any outside communication or pressure to change or not release the entire draft report or portions of the draft language on the voter fraud report? If so, who made those requests?
2. Given the bipartisan nature of the Working Group that guided the Voter Fraud/Intimidation report, and the bipartisan nature of the contracted experts who uniformly support the results of this report, what concerns lead the Commission to determine the report should not be released?
3. If there were points in the report that the Commission objected to, were there attempts to work with the contractors to deal with specific concerns? If there were such attempts, please describe them.

4. Who drafted the Commission summary (released in December, 2006) of the Voter Fraud/Intimidation report, and what were their credentials and involvement in the original research process? Were there instructions or guidance given from Commissioners or senior staff as to what portions of the research should be emphasized? Who at the Commission reviewed the summarized report? Since the contracted experts are referred to in the Commission's released report, were the contractors allowed a chance to review or edit that Commission's final report that was released in December, 2006?
5. Please provide copies of any electronic or written communications between Commission employees that relate to the editing of the Voter Fraud/Intimidation report.
6. Please explain what Mr. Job Serebrov was referring to in his email referenced in the *New York Times* article of April 11, 2007. Please provide any documents in the Commission's possession where employees or contracted experts discussed pressure, political sensitivities, or the failure of the Commission to adopt the Voter Fraud/Intimidation report from March 1, 2006 to present.
7. While we realize that the Commission voted to release its summary report in December 2006, was there a public vote taken to reject the Draft Voter Fraud/Intimidation report? Such a monumental decision to reject the contract experts' work is a policy decision, and one that should be done in public. When was the decision made to reject the original report, and what notice was provided to the public that the Commission would reject that report?
8. Prior to the Draft Voter Fraud/Intimidation report's release, had other organizations requested a copy of that original report? Please include copies of your responses to those organizations, if any.
9. Had any States requested that the Commission or staff provide guidance related to voter identification requirements in the Help America Vote Act, or identification requirements generally? Please provide those requests, and any responses from the Commission.
10. Please indicate what steps the Commission is taking to ensure that political considerations do not impact the agency's research and that decisions are handled in a public and transparent manner.

017745



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**EAGLETON INSTITUTE OF POLITICS**

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April 19, 2007

Donetta Davidson, Chair  
U.S. Election Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, D.C. 20005

Dear Chair Davidson:

I am attaching a copy of a memo I am sending to Adam Abroggi, Counsel for the Senate Committee on Rules and Administration, responding to his request for information about the Eagleton Institute of Politics' contract with the EAC. If you or your staff notice any errors or significant omissions in my summary of our work and coordination with you, please let me know. Also, please don't hesitate to contact us if there are any other ways in which we can help you to advance informed public consideration of provisional voting, voter identification and the other important issues within your purview.

Sincerely,

  
John Weingart  
Associate Director

Cc: Tom Wilkey, Executive Director  
U.S. EAC

---

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Web: www.eagleton.rutgers.edu

017748



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## EAGLETON INSTITUTE OF POLITICS

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To: Adam Ambrogi, Counsel  
Senate Committee on Rules and Administration

From: John Weingart, Associate Director  
Eagleton Institute of Politics

April 19, 2007

Adam

In response to your April 10<sup>th</sup> request, I have pulled together some information about the Eagleton Institute of Politics' contract with the U.S. Election Assistance Commission. Although I did not have a chance to do the thorough review, including comparing notes with all the members of our research team, that would be necessary to compile a full chronology of our work, I hope the following will be useful to you. I will be giving a copy of this memo to EAC Chair Donetta Davidson and Executive Director Tom Wilkey for any assistance it may offer them in responding to Senators Feinstein and Durbin's April 12<sup>th</sup> letter.

By way of background, Rutgers University's Eagleton Institute of Politics submitted a proposal to the EAC on March 25, 2005 to provide "research assistance to the Election Assistance Commission for the development of voluntary guidance on provisional voting and voter identification procedures." The proposal was submitted after extensive discussions with EAC Commissioners and staff that had begun on Election Day, 2004 when Eagleton had received a phone call from the EAC's then-Executive Director asking if the Institute would be interested in undertaking this work.

The proposal was prepared and submitted in partnership with the Moritz College of Law at Ohio State University. At the EAC's request, we proposed to handle the two research topics in sequence, first submitting a report on Provisional Voting and then preparing and submitting the report on Voter Identification. In describing the Voter Identification portion of the study, the proposal stated:

"We propose to test the hypothesis that more stringent voter ID requirements depress voter participation in general or for the poor, minorities and older voters in particular."

The proposal also included a plan to form a peer review group composed of scholars and practitioners in the areas of elections and voting to examine and comment on the research

The following pages provide a preliminary summary of our major contacts with the EAC during the course of the contract, with a focus on our work on Voter Identification. More extensive review of our files, including the monthly progress reports we submitted to the EAC, may find other relevant discussions, but this list at a minimum should provide a good overview.

---

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01774

**May 25, 2005** - Contract awarded

**May 26, 2005** - First meeting of Eagleton-Moritz team with EAC Commissioners and staff in Washington. After general discussion of EAC interest in both topics, Commissioner DiGregorio expresses concern that the composition of the project's peer review group was politically unbalanced. Eagleton had proposed including the following five individuals: R. Michael Alvarez, Professor of Political Science at California Institute of Technology; Martha E. Kropf, Assistant Professor of Political Science at the University of Missouri-Kansas City; Daniel H. Lowenstein, Professor of Law at UCLA; Tim Storey, Program Principal at the National Conference of State Legislatures; and Peter G. Verniero, former New Jersey Attorney General and Supreme Court Justice and current Counsel to Sills, Cummis, Epstein and Gross.

Commissioner DiGregorio subsequently suggests other names for our consideration. We are impressed by the list of people he provides and add three of them to the Peer Review Group: John C. Harrison, Professor of Law at the University of Virginia; Timothy G. O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University; and Bradley Smith, Professor of Law at Capital University Law School. The Project Peer Review Group then had eight participants.

**July 28, 2005** - Brief EAC Commissioners at a public meeting at Cal Tech on progress on the research. Briefing includes this status report on the Voter ID phase of the work: "statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters will be complete in late August."

**August 9, 2005** - First telephone conference with Peer Review Group. Focus is draft Provisional Voting report.

**September 6, 2005** - Meet with the EAC in Washington. Brief the Commission on the status of the research on provisional voting.

**September 21, 2005** - Second telephone meeting of Project Peer Review Group.

**September 30, 2005** - Conference call with EAC Commissioner Martinez and three members of the staff. Commissioner Martinez indicates EAC is generally more comfortable playing the role of a national clearinghouse and therefore prefers to issue reports as "Best Practices" than as "Provisional Guidance." Staff says Eagleton emphasis should be on what states should do as opposed to suggesting how they would do it. Commissioner Martinez concludes meeting saying, "We have been very well served by all the work you and Moritz have done."

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**Feb. 22, 2006** - Conference call with Project Peer Review Group members after they have reviewed first draft of Voter Identification report. The Peer Reviewers suggest the statistical analysis: (1) Look at whether voter identification requirements are related to voter registration rates, as well as turnout; (2) Describe in further detail the basis for the aggregate and individual-level data analyses; (3) Clarify whether the report is examining turnout among citizens eligible to vote, or all individuals of voting age; (4) Stress in a footnote that Hispanics in the individual-level analysis are Hispanics who describe themselves as citizens who are eligible to vote; (5) Discuss in the Appendix the reasons why turnout rates appear to be higher in the Current Population Survey data than in other sources of data; and (6) Use predicted probabilities as opposed to odds ratios to describe the relationship between voter identification requirements and turnout.

*Eagleton subsequently revises draft of the statistical analysis to address all these issues.*

**March 28, 2006** - Conference call with EAC staff and Eagleton-Moritz research team in advance of team's scheduled briefings of EAC Commissioners in Washington, D.C. on Provisional Voting and Voter Identification reports.

**April 3, 2006** - Eagleton-Moritz morning meeting in Washington with EAC Commissioners Davidson and Hillman and staff members. Series of questions and responses on Voter ID methodology.

Commissioners ask whether respondents to the Current Population Survey might be non-citizens who said they were registered and voted. In a subsequent follow-up e-mail, Tim Vercellotti of Eagleton writes that the design of the CPS questionnaire skips non-citizens past questions about registration and voting. Commissioner Davidson asks if the team could examine the relationship between identification requirements and turnout over time. Team members respond that the information on state identification requirements for previous election cycles would require additional extensive research. Commissioner Hillman asks if the report could break out the relationship between voter identification and turnout for African-Americans with education levels of a high school diploma or less, or African-Americans below the poverty line.

*Subsequent analyses examined these subgroups as suggested.*

Eagleton-Moritz afternoon meeting with Commissioners DiGregorio and Martinez and EAC staff. Series of questions and answers. Commissioner Digregorio concludes he is "disappointed" with the report. Commissioner Martinez says he "appreciates" it.

**April 13, 2006** - Conference call between Eagleton and EAC staff. EAC requests that Eagleton convene a conference call of the Project Peer Review Group with EAC staff and/or Commissioners to discuss the statistical analysis of the effects of various Voter Identification requirements on turnout.

EAC staff also reports that the EAC is going to convene its own second peer review group to seek feedback on review by the Project Peer Review Group.

017749

**(April 13, 2006 continued)**

EAC staff also reports that Eagleton is on the preliminary schedule to present Voter ID findings to the EAC's Advisory Board May meeting but that the date and location have not yet been set. EAC staff say they are "unsure where Voter ID project is going. We're going to have to see. We saw lines really drawn politically over Voter ID piece. We'll have to see what statements the agency chooses to make over this topic. It is the topic - It has nothing to do with you. The timing is such that Voter ID is a hot topic."

**April 28, 2006** -Eagleton informs EAC by email of the

017750

HP LaserJet 3390

# Fax Call Report



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Job	Date	Time	Type	Identification	Duration	Pages	Result
339	4/19/2007	4:02:05PM	Receive	7329326778	4:08	6	Comm Error 232

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08:33:08 a.m 04-19-2007 1/0



### FAX COVER SHEET

Date: 4/19/07

To: Tom Wilkey

Fax Number: 202-566-3127

Phone Number: \_\_\_\_\_

Total Number of Pages (including cover sheet): 8

Comments:

From: John Wenzant

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017751



**EAGLETON INSTITUTE OF POLITICS**

**FAX COVER SHEET**

Date: 4/19/07

To: Tom Wilkey

Fax Number: 202-566-3127

Phone Number: \_\_\_\_\_

Total Number of Pages (including cover sheet): 8

Comments:

From: John Wengert

191 RYDERS LANE, NEW BRUNSWICK, NJ 08901-8557

Tel: 732/932-9384  
Fax: 732/932-6778



E-mail: eagleton@rci.rutgers.edu  
Web: www.eagleton.rutgers.edu

017752



bbenavides@eac.gov  
04/26/2007 09:57 AM

To  
cc  
bcc Thomas R. Wilkey/EAC/GOV  
Subject Fw: fraud and intimidation project

This is one of the two e-mails I have.

----- Forwarded by Bert A. Benavides/EAC/GOV on 04/26/2007 09:56 AM -----

Thomas R.  
Wilkey/EAC/GOV

03/13/2006 04:37  
PM

Bert A. Benavides/EAC/GOV@EAC

To  
cc

Subject  
Fw: fraud and intimidation project

FYI

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

----- Forwarded by Thomas R. Wilkey/EAC/GOV on 03/13/2006 03:38 PM -----

Thomas R.  
Wilkey/EAC/GOV

03/13/2006 03:36  
PM

"Tova Wang"  
<wang@tcf.org>@GSAEXTERNAL

To  
cc

Subject  
Re: fraud and intimidation project  
(Document link: Thomas R. Wilkey)

017753

Howq about after 3 tomorrow until 5 9-10 on Wednesday or 3-5 on Wednesday.  
If you call my assistant Bert she will find you a good time frame.  
Sorry that"s my life these days.  
Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

"Tova Wang"  
<wang@tcf.org>

03/13/2006 12:13  
PM

twilkey@eac.gov

To

cc

Subject  
fraud and intimidation project

Hey Tom,

How are you? I hope you're doing well.

I'd like to talk to you about some issues we are having with respect to the  
project when you have a free moment. Is there a good time to call?  
Thanks. Tova

Tova Andrea Wang  
Senior Program Officer and Democracy Fellow  
The Century Foundation  
41 East 70th Street - New York, NY 10021  
phone: 212-452-7704 fax: 212-535-7534

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and events. Click here to receive our weekly e-mail updates.

017754



bbenavides@eac.gov  
04/26/2007 09:58 AM

To  
cc  
bcc Thomas R. Wilkey/EAC/GOV  
Subject Fw: fraud and intimidation project

This is the other e-mail I have for you.

----- Forwarded by Bert A. Benavides/EAC/GOV on 04/26/2007 09:57 AM -----

Thomas R.  
Wilkey/EAC/GOV

03/13/2006 04:37  
PM

Bert A. Benavides/EAC/GOV@EAC

To

cc

Subject  
Fw: fraud and intimidation project

FYI

Thomas R. Wilkey  
Executive Director  
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(202) 566-3109 phone  
TWilkey@eac.gov

----- Forwarded by Thomas R. Wilkey/EAC/GOV on 03/13/2006 03:38 PM -----

Thomas R.  
Wilkey/EAC/GOV

03/13/2006 03:36  
PM

"Tova Wang"  
<wang@tcf.org>@GSAEXTERNAL

To

cc

Subject  
Re: fraud and intimidation project  
(Document link: Thomas R. Wilkey)

017755

Howq about after 3 tomorrow until 5 9-10 on Wednesday or 3-5 on Wednesday.  
If you call my assistant Bert she will find you a good time frame.  
Sorry that"s my life these days.  
Tom

Thomas R. Wilkey  
Executive Director  
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1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
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TWilkey@eac.gov

"Tova Wang"  
<wang@tcf.org>

03/13/2006 12:13  
PM

twilkey@eac.gov

To

cc

Subject  
fraud and intimidation project

Hey Tom,

How are you? I hope you're doing well.

I'd like to talk to you about some issues we are having with respect to the  
project when you have a free moment. Is there a good time to call?  
Thanks. Tova

Tova Andrea Wang  
Senior Program Officer and Democracy Fellow  
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41 East 70th Street - New York, NY 10021  
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017756

Eagleton

U.S. Election Assistance Commission  
Research and Report on Voter Identification Requirements

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between 10 requirements and turnout for all registered voters was fairly small, but still statistically significant.

In the aggregate data, the match-signature requirement and the provide-a-non-photo 10 requirement were correlated with lower turnout compared to requiring that voters state their names. But the photo-IO requirement did not have an effect that was statistically significant, possibly because in 2004 each state requiring a photo-IO provided an alternative way to cast a regular ballot for voters who lacked that document.

In the model using the individual-level data the signature, non-photo 10, and photo 10 requirements were all correlated with lower turnout compared to the requirement that voters simply state their names (in the entire sample and for white voters, but the statistical significance may be an artifact of the very large sample size). That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis performed by the Eagleton Institute of Politics could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If 10 requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they can not meet the requirements on Election Day or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

017757

**Deliberative Process  
Privilege**

**TABLE 1 - Voter 10 Requirements<sup>20</sup>**

State	Maximum Forms of 10 Required 2004	Current 10 Requirement for First-Time Voters	Current 10 Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide 10	Provide 10	Provide 10	Address & Registration
Alaska	Provide 10	Provide 10	Provide 10	Signature
Arizona	Provide 10	Gov-issued Photo 10	Gov-issued Photo 10	Address & Registration
Arkansas	Provide 10	Provide 10	Provide 10	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide 10	Provide 10	Provide 10	Address & Registration
Connecticut	Provide 10	Provide 10	Provide 10	Affidavit
D.C.	Sign Name	Provide 10*	Sign Name	Address & Registration
Delaware	Provide 10	Provide 10	Provide 10	Affidavit
Florida	Photo 10'	Photo 10	Photo 10	Signature
Georgia	Provide 10	Gov. Issued Photo 10	Gov. Issued Photo 10	Affidavit
Hawaii	Photo 101\1\	Photo 10	Photo 101\1\	Affidavit
Idaho	Sign Name	Provide 10*	Sign Name	EOR
Illinois	Give Name	Provide 10*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo 10	Gov. Issued Photo 10	Bring 10 Later
Iowa	Sign Name	Provide 10*	Sign Name	Bring 10 Later
Kansas	Sign Name	Sign Name	Sign Name	Bring 10 Later
Kentucky	Provide 10	Provide 10	Provide 10	Affidavit
Louisiana	Photo 10	Photo 10	Photo IDA	OOB and Address
Maine	Give Name	Provide 10*	Give Name	EOR
Maryland	Sign Name	Provide 10*	Sign Name	Bring 10 Later
Mass.	Give Name	Provide 10*	Give Name	Affidavit
Michigan	Sign Name	Provide 10*	Sign Name	Bring 10 Later
Minnesota	Sign Name/	Provide 10*	Sign Name	EOR
Mississippi	Sign Name	Provide 10*	Sign Name	Affidavit
Missouri	Provide 10	Provide 10*	Provide 10	Address & Registration
Montana	Provide 10	Provide 10*	Provide 10	Bring 10 Later ~
Nebraska	Sign Name	Provide 10*	Sign Name	Affidavit
Nevada	Match Sig.	Provide 10*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide 10*	Match Sig.	Bring 10 Later
New Mexico	Sign Name	Provide 10	Provide 10	Bring 10 Later
New York	Match Sig.	Provide 10*	Match Sig.	Affidavit
NH	Give Name	Provide 10	Give Name	EOR
North Carolina	Give Name	Provide 10*	Give Name	Varies
North Dakota	Provide 10	Provide 10	Provide 10	No Registration
Ohio	Match Sig.	Provide 10	Provide 10	Address & Registration
Oklahoma	Sign Name	Provide 10*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide 10*	Match Sig.	Signature
Penn.	Match Sig.	Provide 10 <sup>4</sup>	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide 10*	Give Name	Address & Registration

<sup>20</sup> See Appendix I for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID*	Photo ID	Photo IDM	Address & Registration
South Dakota	Photo IDo	Photo ID	Photo IDM	Affidavit
Tennessee	Provide ID	Provide ID <sup>1</sup>	Provide ID	Affidavit
Texas	Provide ID	Provide IDo	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide I D	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide I D	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

\* States applies only HAVA's 10 requirement, applicable to first-time voters who registered by mail and did not provide applicable 10 at the time of registration.

<sup>1</sup> Arizona voters who lack a photo 10 may present 2 forms of 10 with no photograph.

<sup>2</sup> Florida required a photo 10 in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo 10 to cast a regular ballot, though voters without photo 10 may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

<sup>3</sup> Louisiana required a photo 10 in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

<sup>4</sup> Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

<sup>5</sup> Voters lacking a photo 10 could vote by providing another form of 10 in 2004.

<sup>6</sup> Voters lacking a photo 10 could vote by providing another form of 10 in 2004.

<sup>7</sup> Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on 10 presented with the registration.

<sup>8</sup> Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

**APPENDIX A: SUMMARY OF VOTER IDENTIFICATION  
REQUIREMENTS BY STATE**

**Sara A. Sampson  
Reference Librarian  
Moritz College of Law  
June 28, 2006**

017760

**Voter ID Requirements**

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	<p>(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification:</p> <p>(1) A current valid photo identification.</p> <p>(2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following:</p> <ul style="list-style-type: none"><li>a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification.</li><li>b. A valid United States passport.</li><li>c. A valid Alabama hunting or fishing license.</li><li>d. A valid Alabama permit to carry a pistol or revolver.</li><li>e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States.</li><li>f. A valid United States military identification card.</li><li>g. A certified copy of the elector's birth certificate.</li><li>h. A valid Social Security card.</li><li>i. Certified naturalization documentation.</li><li>j. A certified copy of court records showing adoption or name change.</li><li>k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card").</li></ul> <p>(c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b).</p> <p>(e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law.</p> <p>(f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs.</p>	Ala. Code § 17-11A-1
Alaska	Provide ID	<p>Effective Date: June 24, 2003</p> <p>(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including</p> <ul style="list-style-type: none"><li>(1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or</li><li>(2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this paragraph must show the name and current address of the voter.</li></ul> <p>(b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under <u>AS 15.07.050</u>, and did not provide identification as required in <u>AS 15.07.060</u>.</p>	Alaska Stat. § 15.15.225

(c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.

effective June 17, 2003

Arizona

Provide ID

B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot:

Ariz. Rev. Stat.  
Ann. § 16-579

1. The person shall present either one of the following:

(a) A current form of identification that bears a photograph of the person and the name of the person.

(b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person.

2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by § 16-584.

Arkansas

Provide ID

Effective Dec. 1, 2003  
7-5-305. Requirements.

Arkansas Code  
Annotated § 7-  
5-305

(a) Before a person is permitted to vote, the election official shall:

(1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list;

(2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate;

(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct;

(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;

(7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and

(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card.

(B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification.

(ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.

(iii) The prosecuting attorney may investigate possible voter fraud; and

(9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the person is a disabled voter and presents himself or herself to vote.

California

Sign Name

Effective: July 16, 2003

Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article.

Cal. Elec. Code  
§ 14216

(Enacted in 1994, no amendments since)

Colorado

Provide ID

(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges,  
\* \* \*

Colo. Rev. Stat.  
Ann. § 1-7-110;  
Colo. Rev. Stat.  
Ann. § 1-1-104

(4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title.

(19.5)(a) "Identification" means:

(I) A valid Colorado driver's license;

(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.;

(III) A valid United States passport;

(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;

(V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;

(VI) A valid United States military identification card with a photograph of the eligible elector;

(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;

(VIII) A valid medicare or medicaid card issued by the United States health care financing administration;

(IX) A certified copy of a birth certificate for the elector issued in the United States; or

(X) Certified documentation of naturalization.

(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.

Connecticut	Provide ID	<p>Effective 5/28/2004</p> <p>(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by <u>section 9-23r</u>, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.</p>	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	<p>Effective May 10., 2004</p> <p>(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record.</p>	15 Del. Code § 4937
D.C.	Sign Name	<p>Effective: July 9, 2002</p> <p>(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection.</p> <p>(2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection.</p> <p>(3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records.</p>	D.C. Code § 1-1001.07

(Effective April 3, 2001)(not added as part of 2005 amendment)

Florida

Photo ID

101.043 (1) The precinct register, as prescribed in s. 98.461, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

West's Fla.  
Stat. Ann. §  
101.043  
& West's Fla.  
Stat. Ann. §  
97.0535

(2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in s. 101.49.

97.0535 (3)(a) The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired:

1. Florida driver's license.
2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
3. United States passport.
4. Employee badge or identification.
5. Buyer's club identification.
6. Debit or credit card.
7. Military identification.
8. Student identification.
9. Retirement center identification.
10. Neighborhood association identification.
11. Entertainment identification.
12. Public assistance identification.

(b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant:

1. Utility bill.
2. Bank statement.
3. Government check.
4. Paycheck.
5. Other government document (excluding voter identification card).

Georgia

Provide ID

Version effective 1/1/2005-12/31/2005

(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

- (1) A valid Georgia driver's license;
- (2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;
- (3) A valid United States passport;
- (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;
- (5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business;
- (6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia;
- (7) A valid Georgia license to carry a pistol or revolver;
- (8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States;
- (9) A valid United States military identification card;
- (10) A certified copy of the elector's birth certificate;
- (11) A valid social security card;
- (12) Certified naturalization documentation;
- (13) A certified copy of court records showing adoption, name, or sex change;
- (14) A current utility bill, or a legible copy thereof, showing the name and address of the elector;
- (15) A bank statement, or a legible copy thereof, showing the name and address of the elector;
- (16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or
- (17) A government document, or a legible copy thereof, showing the name and address of the elector.

(b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement."

Ga. Code. Ann.  
§ 21-2-417

Hawaii

Photo ID

effective June, 2003

(b) The voter shall present valid identification to the official in charge of the pollbook.

Haw. Code. R.  
§ 2-51-80  
(Paper ballots;  
voting  
procedure at the  
polls), § 2-51-  
83 (Punchcard

ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b)

Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix

***Do I Need an I.D. to Vote on Election Day?***

**Yes.** Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification.

From the 2004 version of the administrative code.

**§ 11-136 Poll book, identification, voting.**

Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.

HRS 11-136

After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting.

Last amended 2003.

Idaho

Sign Name

(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.

Id. St. §34-1106

(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein.

(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots.

Illinois

Give Name

(Last amended in 1972)

Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be

10 Ill. Comp. Stat. 5/17-9

cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.

Indiana Sign Name

Iowa Sign Name

West's  
Annotated  
Indiana Code §  
3-11-8-25  
Iowa Code §  
49.77

1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:

VOTER'S DECLARATION OF ELIGIBILITY

I do solemnly swear or affirm that I am a resident of the ..... precinct, ..... ward or township, city of ....., county of ....., Iowa.

I am a registered voter. I have not voted and will not vote in any other precinct in said election.

I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

\_\_\_\_\_  
Signature of Voter

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

Approved:

\_\_\_\_\_  
Board Member

2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person

does not interfere with the functions of the precinct election officials.

3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.

A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

Kansas	Sign Name	<p>(From 2004 version of Iowa Annotated Code; effective January 1, 1995) (b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention.</p>	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	<p>(Approved April 14, 2004, 2004 Kansas Laws Ch. 93)</p> <p>117.227 Confirmation of voter's identity</p> <p>Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification.</p> <p>Effective: 7/15/02</p> <p>31 KAR 4:010. Voter identification cards.</p> <p>Section 1. In addition to the forms of identification specifically provided for by <u>KRS 117.227</u>, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.</p>	Ky Rev. Stat. Ann. 117.227  31 Ky. Admin. Regs. 4:010.
Louisiana	Photo ID	<p>A. Identification of voters.</p> <p>(1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place.</p> <p>(2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to <u>R.S. 40:1321</u>, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in <u>R.S. 18:565</u>.</p>	La. Rev. Stat. Ann. 18:562

Effective: 1/1/2002

