

FINAL D R A F T

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)¹³. 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.¹⁴ 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.

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

¹³ Litigation documents are available at the Election Law @ Moritz website.

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

¹⁴ GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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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.¹⁵ 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).

¹⁵ 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.

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APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

- Angelo J. Genova & Rebecca Moll Freed, *The Right to Vote and Be Counted: A Liberty at Risk*, 233 N.J. LAW 44, Apr. 2005.
 - Discusses HAVA a lot
- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
 - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
 - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
 - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
 - Discusses changes in AL to their election law in 2003, including adding voter ID
 - HAVA discussed
- Clifford B. Levine, Esq. & David J. Montgomery, Esq., *Post-Election Litigation in Pennsylvania*, 41 Duq. L. Rev. 153 (Fall, 2002).
 - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
 - Discusses a GA law in 2001 removing hunting & fishing licenses from list of acceptable ID and a failed amendment to limit acceptable ID to photo ID only
- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
 - General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
- John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions*, 74 U. DET. MERCY L. REV. 291 (Winter 1997).
 - discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
 - arguments against photo ID
- Deborah S. James, Note, *Voter Registration: A Restriction on the Fundamental Right to Vote*, 96 YALE L.J. 1615 (1987).
 - Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

- Gabrielle B. Ruda, Note, *Picture Perfect: A Critical Analysis of the Debate on the 2002 Help America Vote Act*, 31 FORDHAM URB. L.J. 235 (November 2003).
 - Lot of analysis on HAVA and voter ID
 - Little bit of historical
 - Arguments for and against certain types of voter ID laws

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- Kimberly C. Delk, *What Will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 LOY. J. PUB. INT. L. 133 (Spring 2001).
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 - Future: I-voting & e-registration – improvements in voter ID which would result

Marginally relevant/limited discussion of Voter ID issues

- Jeanne S. Zaino & Jeffrey T. Zaino, *The Changing Landscape of Election Disputes*, 59 DISP. RESOL. J. 11 (Aug. – Oct. 2004).
 - Discusses HAVA & implementation
- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
 - Discusses an AL law expanding exemptions to ID requirement if 2 poll workers identify them
- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
 - Internet voting
- Kristen E. Larson, Note, *Cast Your Ballot.com: Fulfill Your Civic Duty over the Internet*, 27 WM. MITCHELL L. REV. 1797 (2001).
 - Voter ID and Internet voting
 - Costs & Benefits of Internet voting
 - States using or examining Internet voting
- Hugh M. Lee, *An Analysis of State and Federal Remedies for Election Fraud, Learning from Florida's Presidential Election Debacle?*, 63 U. Pitt. L. Rev. 159 (Fall, 2001).
 - Discusses illegal ballots, fraudulent registration
- Katharine Hickel Barondeau & Terry M. Jarrett, *The Florida Election Debacle: Can it Happen in Missouri?*, 57 J. Mo. B. 294, Nov./Dec. 2001.
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- Priscilla L. Southwell & Justin Burchett, *Vote-by-Mail in the State of Oregon*, 34 Willamette L. Rev. 345 (Spring 1998).
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- Jonathan E. Davis, *Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud*, 6 Temp. Pol. & Civ. Rts. L. Rev. 117 (Fall 1996/Spring 1997).
 - Voter fraud arguments against NVRA
- James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189 (Fall 1990).
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Appendix

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Subject Fw: Final Best Practices document final and attachment Two

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To ~~Karen Lynn-Dyson/EAC/GOV/EAC/GOV~~
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Subject Final Best Practices document final and attachment Two

Final markups



Best Practices FINAL 2-23-06.doc



- Final Best Practices__attachment Two.xls

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DRAFT

**Deliberative Process
Privilege**

Report to the
U. S. Election Assistance Commission
On
Best Practices to Improve Provisional Voting
Pursuant to the
HELP AMERICA VOTE ACT OF 2002
Public Law 107-252

November 23, 2005

Submitted by

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

The Moritz College of Law, The Ohio State University

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FINAL DRAFT

11/23/2005

**Report to the
U. S. Election Assistance Commission
Best Practices to Improve Provisional Voting**

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Executive Summary

Please provide an Executive Summary to provide background and summarize the key recommendations.

Background of the Research

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning provisional voting, a sample survey of local election officials, and a statistical analysis of provisional voting in the 2004 election. Also consulted as a basis for these recommendations were other studies, notably the EAC's Election Day Survey.¹ (Recommended as Research Methodology description)

The Help America Vote Act of 2002 (HAVA) (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient.

Section 302(a) of HAVA requires states to establish the process of provisional balloting by January 2004.² The process HAVA outlined leaves considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voters eligible to cast a provisional ballot that will be counted and, arguably, in what jurisdiction (precinct or larger unit) that where the ballot must be cast in order to be counted.³

The general requirement is that, if a registered voter appears at a polling place to vote in an election for Federal office, but the potential voter's name does not appear on the official list of eligible voters for the polling place, or if an election official asserts that the individual is not eligible to vote, that potential voter be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the Election Day Survey, first-time voters who cannot provide identification, as required under HAVA, and voters who were

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challenged at the poll.⁴ HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. HAVA also requires election administrators to notify individuals of their opportunity to cast a provisional ballot.

Provisional Ballots in the 2004 Election

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.⁵ (This number does not match the EAC 2004 Election Day Survey. 64.5% counted)

These totals obscure the tremendous variation in provisional voting among the states. HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Six states accounted for two-thirds of all the provisional ballots cast.⁶ State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000, from a high of 7% in Alaska's to Vermont's .006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted ballots at more than twice that rate: 44%. (Or, as the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without."⁷)

The wide variations in the use of provisional ballots argue for the promulgation of best practices that states can use to determine how to make procedures clearer to both officials and voters could improve the implementation of provisional voting across the country. (Is this a best practices recommendation?)

One important source of variation among states was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.⁸

⁴ The definition of who was entitled to a provisional ballot could differ significantly among the states. In California, for example, the Secretary of State directed counties to provide voters with the option of voting on a provisional paper ballot if they felt uncomfortable casting votes on the paperless e-voting machines. "I don't want a voter to not vote on Election Day because the only option before them is a touch-screen voting machine. I want that voter to have the confidence that he or she can vote on paper and have the confidence that their vote was cast as marked," Secretary Shelley said. See <http://wired.com/news/evote/0,2645,63298,00.htm>. (Our analysis revealed no differences in the use of provisional ballots in the counties with these paperless e-voting machines.) In Ohio, long lines at some polling places resulted in legal action directing that voters waiting in line be given provisional ballots to enable them to vote before the polls closed. (Columbus Dispatch, November 3, 2004.)

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)

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- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.⁹ That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

- Be prepared to direct voters to their correct precincts with maps;
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- Conclude that the provisional voting process¹ helped officials maintain accurate registration databases.

Officials from "new" states, on the other hand, were more likely to agree with the statement that provisional voting created unnecessary problems for election officials and poll workers.

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by

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⁹ Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6 day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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**Report to the
U. S. Election Assistance Commission**

Best Practices to Improve Provisional Voting

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Executive Summary

Please provide an Executive Summary to provide background and summarize the key recommendations.

Background of the Research

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- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)
- Perhaps another reason provisional ballots must be cast in the correct precinct in order to be counted is that local races are also important and that allowing provisional ballots to be counted by voters who cast them outside of the precinct and only counting the ballots for the upper ballot races for outside of the precinct can disenfranchise voters from participating in local races. This argument has been used by many legislatures and in court cases to require that provisional ballots must be cast in the correct precinct in order to be counted.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. ~~The EAC should consider providing all states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.~~

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But the optimistic conclusion that experience will make all the difference may be unwarranted. Only if the performance of the "new" states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning

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curve. Two other possibilities exist. Current understanding of the provisional voting processes in use in 2004 is not sufficient to determine unambiguously which view is correct.

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots – as measured by intrastate consistency in administration--- will be harder and take longer to achieve.¹⁰ This ballot should mention something about election judges and their training.

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2. ~~Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail-safe way for voters with registration problems a way to cast a ballot! (wording too strong)~~ The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

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Other influences decreasing consistency among the states include:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted. Some states merely require a voter's signature, some match signatures, some require identity documents, others require an affidavit, and a few require photo identification.¹¹
 - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
 - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
 - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
 - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half

¹⁰ Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, "no state gave the voter the right to find out the status of their ballot after the election. " Now all offer that opportunity. See Bali and Silver, "The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000," manuscript, Department of Political Science, Michigan State University. Resisting HAVA's mandates through foot-dragging lacks any legitimate foundation in law or policy.

¹¹ See Table 2 in Appendix 2 for information on the verification method used in each state.

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(52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office. (the voter was registered, than the ballot counted, the voter did not have to present identification).

~~This section needs a mention of the VR databases~~

- Voter registration databases provided information that reduced the number of provisional ballots counted.¹² In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.¹³
 - In experienced states, the disparity was even more pronounced; 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
 - If all states had counted out-of-precinct ballots, perhaps 290,000 more voters would have been enfranchised across the country.¹⁴

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Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots. ~~Perhaps it is the judges training or it is, in part, because of different laws.~~¹⁵

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¹² The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

¹³ The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

¹⁴ This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

¹⁵ For example, The Election Day Survey also found that "the reported rate of provisional ballots cast increases with population size, from 0.10 percent for voter registration in jurisdictions under 1,000 voting age population (VAP), to 2.51 percent in jurisdictions over one million VAP. It also calculated that, "The highest reported rate of counting provisional ballots was also among predominantly Hispanic jurisdictions, 79.30 percent, followed by predominantly

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Reacting to the lack of consistency within states, (not the Carter-Baker Commission) recommended that "states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state."¹⁶

Election Line reported that:

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

Resources available to administer provisional voting varied considerably among and within states. The result is that differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that:

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.
- Staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.
- Predominantly non-Hispanic, Black jurisdictions reported a greater percentage of polling places or precincts with an inadequate number of poll workers. Predominantly non-Hispanic, Native American jurisdictions reported the second highest percentage of staffing problems.

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, (no previous mention of this factor. What research exists to back up naming high mobility as a factor?) and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader

non-Hispanic White areas, 62.60 percent; predominantly non-Hispanic Black communities, 58.60 percent; and predominantly non-Hispanic Native American jurisdictions, 48.70 percent.

¹⁶ Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p. 16. The report observed that, "... different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

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measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology (what is meant by this statement) and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available. (Are polling places posting their provisional voting signs? Are election judges doing their jobs?)

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect an accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots enfranchised 1.2 million citizens, who would otherwise have been turned away from the polls.

Not knowing the total number of registered voters who might have voted but could not makes a precise, quantitative estimate of the effectiveness of provisional voting impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the 2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

Estimates of Votes Lost In 2000 Presidential Election

Votes Lost (Millions)	Cause
1.5 – 2	Faulty equipment and confusing ballots
1.5 – 3	Registration mix-ups
<1	Polling place operations
?	Absentee ballot administration

Table 1 Cal Tech – MIT Voting Technology Project Estimates
4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then,

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might be 40% to 50% (ballots counted/votes lost)*. (this is unclear. What is trying to be said? Is a comparison of the # of provisional ballots actually counted to the MIT estimate of lost ballots in 2000 being made? If so, would the MIT survey be influenced by the implementation of statewide voter registration databases or other interim measures that would improve the quality of voter registration lists?) Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states¹⁷ came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.¹⁸

Lack of uniform rules for counting ballots and effective training of the election officials in interpreting and applying those rules to determine the validity of ballots. Colorado, New Mexico, North Carolina, and Washington have all passed legislation focused on improving the efficacy and consistency of the voting and counting process.

The issue of counting provisional ballots cast in the wrong precinct was addressed by Colorado, Arkansas, and North Dakota. How was it addressed?

Litigation

Successful legal challenges to the process highlight areas where provisional voting procedures were wanting. A flurry of litigation occurred around the country in October 2004 concerning the so-called "wrong precinct issue" – whether provisional ballots cast by voters in a precinct other than their designated one would be counted for statewide races. These lawsuits were largely unsuccessful in their stated goal: most courts, including the U.S. Court of Appeals for the Sixth Circuit (the only federal appeals court to rule on the issue), rejected the contention that HAVA requires the counting of these wrong-precinct provisional ballots.

* Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems after each election when it asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, "registration problems" would cover only voters who went to the polls where the determination that they were not registered was wrong or were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

¹⁷ Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

¹⁸ The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots.*" The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny. See Appendix 7, GAO, "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

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This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second –and significantly– the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot – although the litigation regrettably came too late to be truly effective in this regard. In many states, on Election Day 2004, the procedures in place for notifying voters about where to go were less than ideal, reflecting less-than-ideal procedures for training poll workers on this point.

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

Need for Promulgation of Best Practices

Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use of provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. ~~This is false. If they are registered (the voter registration database is checked as required by HAVA or restricted by state requirement) the provisional counts.~~ Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices based on the experience gained in the 2004 election can be useful in states' efforts to achieve greater consistency in the administration of provisional voting.

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity

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among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Self-evaluation of Provisional Voting – 4 Key Questions ~~(Best practice suggestion?)~~

The first recommendation is not for a specific procedure, but rather for a way of thinking about provisional voting. As legislators and election officials in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the ~~system sufficiently robust~~ (what system – the voting system or the procedures for provisional voting?) to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and with litigation looming?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

If the answers to these questions leave room for doubt about the effectiveness of the system or some of its parts, the EAC's recommendation of best practices should provide the starting point for a state's effort to improve its provisional voting system.

Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention, and we offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process. ~~(State how were these particular best practices chosen or arrived at?)~~

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result—well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of

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the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."¹⁹

Litigation surrounding the 2004 election resulted in decisions that, if reflected in state statutes or regulations and disseminated in effective training for poll workers, can increase the clarity of provisional ballot procedures, increase predictability, and bolster confidence in the system. By taking the following steps, states can incorporate those court rulings into their procedures.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.²⁰ Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.²¹ (does this mean that the state should provide poll workers training? Most provided by local election jurisdictions. Is the recommendation to deviate from current practice?)
- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.²² Recent legislation in Arizona indicates that HAVA's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.²³

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States

¹⁹ The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

²⁰ See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

²¹ See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

²² *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

²³ *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

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can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency." ²⁴
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant. ²⁵
3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information. Why not recommend local websites to do the same as state sites?

B. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot.

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. It's the law. Do they understand that all have to do this? Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display. ²⁶ After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school." ²⁷ Most states require this. It is not new. In fact, Florida's statutory training provisions are among the highest in the nation. Such statutory direction could help other states ensure uniform instruction of poll workers.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

²⁴ Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website.

²⁵ The Century Foundation, op. cit.

²⁶ 8 Colo. Code Regs. § 1505-1, Rule 7.1.

²⁷ 2005 N.M. Laws 270 page no. 4-5.

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3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."²⁸ At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.²⁹
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.³⁰ Seems like most states require training; do they have data on that? Florida's statutory training provisions among the strongest in the nation.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."³¹ Nonetheless, the *Panio v. Sutherland*³² decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the

²⁸ Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

²⁹ Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

³⁰ 10 Ill. Comp. Stat. Ann. 5/18A-10(b). Indiana requires that the precinct election board give the ballots to the Inspector, who takes the ballots to Circuit Court Clerk. Ind. Code Ann. Sec. 3-11.7-2-4

³¹ The Century Foundation, op. cit.

³² 4 N.Y.3d 123, 824 N.E.2d 488 (N.Y. 2005) and Memorandum (LaPlante—Foley) Provisional Ballot Cases by State, July 19, 2005.

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same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.³³

2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct.³⁴ The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report. EAC Chairman: does not agree w/ this recommendation. It does not take into account for local offices that would not be voted upon w/ such practices. Voters would then not be directed or go to their correct polling place to cast a ballot.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location.³⁵ Can the best practice be to send voter to correct precinct – if its in the same building as suggested in this recommendation. Why disenfranchise voter from voting on a local race?
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed

³³ In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104.

Deadlines in other states are: Alabama – 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (I); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

³⁴ See Andersen, *op. cit.*, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

³⁵ Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

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publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.³⁶

Colorado Rejection Codes (Any ballot given a rejection code shall not be counted):

RFS	(Rejection federal or state) No federal or state candidates or issues to duplicate.
RNS	(Rejection not signed) Provisional Ballot Affidavit not signed.
RIN	(Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
RNR	(Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
REE	(Rejection envelope empty) Provisional ballot envelope is empty.
RAB	(Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
REV	(Rejection based on ballot cast in early voting) Voter voted early.
RIP	(Rejection based on incorrect party) Incorrect Party in Primary Election.
RFE	(Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
RWC	(Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
RID	(Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
RRD	(Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to

³⁶ 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available. Why is it suggested that completing eligibility evaluations are more critical in presidential elections? What about gubernatorial elections?

E. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will provide helpful feedback and more important enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

1. Establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

F. State Laws Governing Litigation over Provisional Voting

1. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public. The process not the names since by law they cannot be revealed.

H. Continuous Assessment of the Provisional Ballot -- Process and Performance

Defining what constitutes a successful provisional voting system is difficult. As noted earlier, the most successful system is probably not the one with the most provisional votes cast (that could indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted necessarily superior because the evaluation process could be flawed.

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations (what is meant by national quality organizations? Examples?) to evaluate the provisional ballot process within the broader context of the electoral system.

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Pending such a review, the EAC can recommend that states take the following actions.

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.
2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:
 - Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (lack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
 - Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
 - Measures of variance among jurisdictions.
 - Number of poll workers trained in administration of provisional voting by polling place
 - Number of jurisdictions posting information on provisional voting in the polling place
 - Time required to evaluate ballots by jurisdiction

Improving understanding of the provisional voting process through analysis of detailed information will enable state and local election officials to strengthen their systems. By collecting and analyzing this data states can identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as a way to reduce the need for voters to cast their ballots provisionally.

Conclusion -- Research-based, continuing improvements for provisional voting are needed (This section should be the first part of the document)

The recommendations above are based on research that began in late May 2005. Our research focused on six key questions raised by the EAC. The answers to those questions provided the foundation for our policy recommendation. Those questions are:

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?
2. How did this vary between states that had previously had some form of provisional ballot and those that did not?
3. How did litigation affect implementation?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did state and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

(Should this section be put under a Research Methodology section at the beginning?)

To answer those questions, the Eagleton-Moritz team undertook the following research efforts:

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis

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3. ~~Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification~~
4. ~~Collection and review of the provisional voting statutes and regulations in all 50 states~~
5. ~~Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states~~

Our research-based recommendations provide EAC with a strategy to engage the states in a continuing effort to strengthen the provisional voting process and increase the consistency with which provisional voting is administered, particularly within a state. As EAC and the states moved forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly states that did not offer a provisional ballot before 2004, gain greater experience with the process and as statewide voter databases are adopted, the provisional voting process will demand further, research-based refinement.

ATTACHMENT 1 – Characteristics of the Provisional Voting Process

Classification of the States

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The variables used to analyze a state's use of provisional ballots:

Deleted: categories analyzed here ar

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1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

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Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

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New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting³⁷ and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

³⁷ This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

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Table 1		
CATEGORIZATION OF STATES -- Old vs New		
<u>Old States</u>	<u>New States</u>	<u>HAVA Exempt or NA</u>
<u>Alaska</u>	<u>Connecticut</u>	<u>Idaho</u>
<u>Alabama</u>	<u>Delaware</u>	<u>Maine</u>
<u>Arkansas</u>	<u>Georgia</u>	<u>Minnesota</u>
<u>California</u>	<u>Hawaii</u>	<u>New Hampshire</u>
<u>Colorado</u>	<u>Illinois</u>	<u>North Dakota</u>
<u>DC</u>	<u>Indiana</u>	<u>Wisconsin</u>
<u>Florida</u>	<u>Louisiana</u>	<u>Wyoming</u>
<u>Iowa</u>	<u>Massachusetts</u>	
<u>Kansas</u>	<u>Missouri</u>	
<u>Kentucky</u>	<u>Montana</u>	
<u>Maryland</u>	<u>Nevada</u>	
<u>Michigan</u>	<u>Oklahoma</u>	
<u>Mississippi</u>	<u>Pennsylvania</u>	
<u>Nebraska</u>	<u>Rhode Island</u>	
<u>New Jersey</u>	<u>South Dakota</u>	
<u>New Mexico</u>	<u>Tennessee</u>	
<u>New York</u>	<u>Utah</u>	
<u>North Carolina</u>	<u>Vermont</u>	
<u>Ohio</u>		
<u>Oregon</u>		
<u>South Carolina</u>		
<u>Texas</u>		
<u>Virginia</u>		
<u>Washington</u>		
<u>West Virginia</u>		
26	18	7

Statewide List of Registered Voters

The Electionline preview of the 2004 Election³⁸ was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

³⁸ "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

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~~Table 2 (This table is no longer germane.)~~

CATEGORIZATION OF STATES -- Statewide Registration Database

<u>Had Database 2004</u>	<u>No Database A-N</u>	<u>No Database N-W</u>	<u>HAVA Exempt or NA</u>
<u>Alaska</u>	<u>Alabama</u>	<u>Ohio</u>	<u>Iowa</u>
<u>Arizona</u>	<u>Arkansas</u>	<u>Oregon</u>	<u>Maine</u>
<u>Connecticut</u>	<u>California</u>	<u>Pennsylvania</u>	<u>Mississippi</u>
<u>Delaware</u>	<u>Colorado</u>	<u>Rhode Island</u>	<u>Minnesota</u>
<u>District of Columbia</u>	<u>Florida</u>	<u>Tennessee</u>	<u>New Hampshire</u>
<u>Georgia</u>	<u>Idaho</u>	<u>Texas</u>	<u>North Dakota</u>
<u>Hawaii</u>	<u>Illinois</u>	<u>Utah</u>	<u>Wisconsin</u>
<u>Kentucky</u>	<u>Indiana</u>	<u>Vermont</u>	<u>Wyoming</u>
<u>Louisiana</u>	<u>Kansas</u>	<u>Virginia</u>	
<u>Massachusetts</u>	<u>Maryland</u>	<u>Washington</u>	
<u>Michigan</u>	<u>Missouri</u>		
<u>New Mexico</u>	<u>Montana</u>		
<u>Oklahoma</u>	<u>Nebraska</u>		
<u>South Carolina</u>	<u>Nevada</u>		
<u>South Dakota</u>	<u>New Jersey</u>		
<u>West Virginia</u>	<u>New York</u>		
	<u>North Carolina</u>		
16	27		8

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election². States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

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Table 3		
CATEGORIZATION OF STATES – Counting Out-Of-Precinct Ballots		
Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
<u>Alaska</u>	<u>Alabama</u>	<u>Idaho</u>
<u>Arkansas</u>	<u>Arizona</u>	<u>Maine</u>
<u>California</u>	<u>Colorado (after the court case)</u>	<u>Mississippi</u>
<u>Delaware</u>	<u>Connecticut</u>	<u>New Hampshire</u>
<u>Georgia</u>	<u>District of Columbia</u>	<u>North Dakota</u>
<u>Illinois (Not sure the law is that clear. Please check different counties did it differently.)</u>	<u>Florida</u>	<u>Wisconsin</u>
<u>Kansas</u>	<u>Hawaii</u>	<u>Wyoming</u>
<u>Louisiana</u>	<u>Indiana</u>	
<u>Maryland</u>	<u>Iowa</u>	
<u>New Mexico</u>	<u>Kentucky</u>	
<u>North Carolina</u>	<u>Massachusetts</u>	
<u>Oregon</u>	<u>Michigan</u>	
<u>Pennsylvania</u>	<u>Missouri</u>	
<u>Rhode Island</u>	<u>Montana</u>	
<u>Utah</u>	<u>Nebraska</u>	
<u>Vermont</u>	<u>Nevada</u>	
<u>Washington</u>	<u>New Jersey</u>	
	<u>New York</u>	
	<u>Ohio</u>	
	<u>Oklahoma</u>	
	<u>South Carolina</u>	
	<u>South Dakota</u>	
	<u>Tennessee</u>	
	<u>Texas</u>	
	<u>Virginia</u>	
	<u>West Virginia</u>	
<u>17</u>	<u>26</u>	<u>7</u>

Voter Identification

We relied on Electionline studies, including the Voter Identification study³⁹ and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.⁴⁰ The five

³⁹ This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>

⁴⁰ In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

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different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4

CATEGORIZATION OF STATES -- Forms of Identification Required

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.

<u>Give Name</u>	<u>Sign Name</u>	<u>Match Signature</u>	<u>Provide ID</u>	<u>Photo ID</u>
<i>Maine</i>	<i>California</i>	<i>Illinois</i>	<i>Alabama</i>	<i>Florida</i>
<i>Massachusetts</i>	<i>DC</i>	<i>Nevada</i>	<i>Alaska</i>	<i>Hawaii</i>
<i>New Hampshire</i>	<i>Idaho</i>	<i>New Jersey</i>	<i>Arizona</i>	<i>Louisiana</i>
<i>North Carolina</i>	<i>Indiana</i>	<i>New York</i>	<i>Arkansas</i>	<i>South Carolina</i>
<i>Rhode Island</i>	<i>Iowa</i>	<i>Ohio</i>	<i>Colorado</i>	<i>South Dakota</i>
<i>Utah</i>	<i>Kansas</i>	<i>Oregon</i>	<i>Connecticut</i>	
<i>Vermont</i>	<i>Maryland</i>	<i>Pennsylvania</i>	<i>Delaware</i>	
<i>Wisconsin</i>	<i>Michigan</i>	<i>West Virginia</i>	<i>Georgia</i>	
<i>Wyoming</i>	<i>Minnesota</i>		<i>Kentucky</i>	
	<i>Mississippi</i>		<i>Missouri</i>	
	<i>Nebraska</i>		<i>Montana</i>	
	<i>New Mexico</i>		<i>North Dakota</i>	
	<i>Oklahoma</i>		<i>Tennessee</i>	
	<i>Washington</i>		<i>Texas</i>	
			<i>Virginia</i>	
<u>9</u>	<u>14</u>	<u>8</u>	<u>15</u>	<u>5</u>

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

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Table 5

CATEGORIZATION OF STATES -- Ballot Evaluation Methods

States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis. No states have been italicized. Is this correct?

<u>Signature Match</u>	<u>Data Match</u>	<u>Affidavit</u>	<u>Return with ID</u>	<u>NA</u>
<u>Alaska</u>	<u>Alabama</u>	<u>Connecticut</u>	<u>Indiana</u>	<u>Idaho</u>
<u>California</u>	<u>Arizona</u>	<u>Delaware</u>	<u>Iowa</u>	<u>Maine</u>
<u>Florida</u>	<u>Arkansas</u>	<u>Georgia</u>	<u>Kansas</u>	<u>Mississippi</u>
<u>Oregon</u>	<u>Colorado</u>	<u>Hawaii</u>	<u>Maryland</u>	<u>Minnesota</u>
	<u>DC</u>	<u>Illinois</u>	<u>Michigan</u>	<u>New Hampshire</u>
	<u>Louisiana</u>	<u>Kentucky</u>	<u>Montana</u>	<u>N. Carolina*</u>
	<u>Missouri</u>	<u>Massachusetts</u>	<u>New Jersey</u>	<u>N. Dakota</u>
	<u>Ohio</u>	<u>Nebraska</u>	<u>New Mexico</u>	<u>Wisconsin</u>
	<u>Oklahoma</u>	<u>Nevada</u>	<u>Texas</u>	<u>Wyoming</u>
	<u>Pennsylvania</u>	<u>New York</u>	<u>Utah</u>	
	<u>Rhode Island</u>	<u>South Dakota</u>		
	<u>S. Carolina</u>	<u>Tennessee</u>		
	<u>Washington</u>	<u>Vermont</u>		
	<u>West Virginia</u>	<u>Virginia</u>		
4	14	14	10	9

Data Collection

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.

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Table 6	
Updated information by State	
<u>Received Updated Data</u>	<u>Did Not Receive Updated Data</u>
<u>California</u>	<u>Alabama</u>
<u>District of Columbia</u>	<u>Alaska</u> ⁴¹
<u>Florida</u>	<u>Arizona</u>
<u>Hawaii</u>	<u>Arkansas</u>
<u>Indiana</u>	<u>Colorado</u>
<u>Iowa</u>	<u>Connecticut</u>
<u>Kansas</u>	<u>Delaware</u>
<u>Louisiana</u>	<u>Georgia</u>
<u>Maryland</u> ⁴²	<u>Idaho</u>
<u>Missouri</u>	<u>Illinois</u>
<u>Montana</u>	<u>Kentucky</u>
<u>Nebraska</u> ⁴³	<u>Maine</u>
<u>Nevada</u>	<u>Massachusetts</u>
<u>New Jersey</u>	<u>Michigan</u>
<u>New Mexico</u>	<u>Minnesota</u>
<u>Ohio</u>	<u>Mississippi</u>
<u>Oklahoma</u>	<u>New Hampshire</u>
<u>Oregon</u>	<u>New York</u>
<u>Pennsylvania</u>	<u>North Carolina</u>
<u>Rhode Island</u>	<u>North Dakota</u>
<u>South Dakota</u>	<u>South Carolina</u>
<u>Tennessee</u>	<u>Utah</u>
<u>Texas</u>	<u>Vermont</u>
<u>Virginia</u>	<u>Wisconsin</u>
<u>Washington</u>	<u>Wyoming</u>
<u>West Virginia</u>	
<u>26 States</u>	<u>25 States</u>

⁴¹ Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

⁴² Maryland reported provisional ballots that were counted per county, but not number cast.

⁴³ Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

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Data Differences

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated. Please explain the 0/8022 discrepancy under North Carolina "differences" since you indicate the info was not updated from the database.

<u>State</u>	<u>EDS Numbers Cast/Counted</u>	<u>Our Numbers Cast/Counted</u>	<u>Differences</u>	<u>Updated Info from State?</u>
<u>Alabama</u>	<u>6,478/1,865</u>	<u>6560/1836</u>	<u>82/29</u>	<u>No</u>
<u>Alaska</u>	<u>23,285/22,498</u>	<u>23,275/22,498</u>	<u>10/0</u>	<u>No</u>
<u>Colorado</u>	<u>51,529/39,086</u>	<u>51,477/39,163</u>	<u>52/77</u>	<u>No</u>
<u>Georgia</u>	<u>12,893/4,489</u>	<u>12,893/3,839</u>	<u>0/650</u>	<u>No</u>
<u>Hawaii</u>	<u>346/25</u>	<u>348/25</u>	<u>2/0</u>	<u>Yes</u>
<u>Iowa</u>	<u>15,406/8,038</u>	<u>15,454/8,048</u>	<u>48/10</u>	<u>Yes</u>
<u>Kansas</u>	<u>45,535/32,079</u>	<u>45,563/31,805</u>	<u>28/274</u>	<u>Yes</u>
<u>Montana</u>	<u>688/378</u>	<u>653/357</u>	<u>35/21</u>	<u>Yes</u>
<u>Nebraska</u>	<u>17,421/13,788</u>	<u>17,003/13,298</u>	<u>418/490</u>	<u>Yes</u>
<u>Nevada</u>	<u>6,153/2,446</u>	<u>6,154/2,447</u>	<u>1/1</u>	<u>Yes</u>
<u>New Mexico</u>	<u>6,410/2,914</u>	<u>15,360/8,767</u>	<u>8,950/5,853</u>	<u>Yes</u>
<u>N. Carolina</u>	<u>77,469/50,370</u>	<u>77,469/42,348</u>	<u>0/8,022</u>	<u>No</u>
<u>Ohio</u>	<u>157,714/123,902</u>	<u>158,642/123,548</u>	<u>928/354</u>	<u>Yes</u>
<u>Pennsylvania</u>	<u>No data</u>	<u>53,698/26,092</u>	<u>53,698/26,092</u>	<u>Yes</u>
<u>Texas</u>	<u>35,282/7,156</u>	<u>36,193/7,770</u>	<u>911/614</u>	<u>Yes</u>
<u>Vermont</u>	<u>121/30</u>	<u>101/37</u>	<u>20/7</u>	<u>No</u>
<u>Virginia</u>	<u>4,608/728</u>	<u>4,609/728</u>	<u>1/0</u>	<u>Yes</u>
<u>Washington</u>	<u>92,402/73,806</u>	<u>86,239/69,273</u>	<u>6,163/4,533</u>	<u>Yes</u>
<u>Wisconsin</u>	<u>374/119</u>	<u>373/120</u>	<u>1/1</u>	<u>No</u>

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Alabama	Affidavit	0.10	28.00
Alaska	PV	7.20	97.00
Arizona	PV	3.66	73.00
Arkansas	PV	0.35	48.00
California	PV	3.96	74.00
Colorado	LPV	1.84	76.00
Connecticut	None	0.03	32.00
Delaware	None	0.01	6.00
District of Columbia	PV	3.51	71.00
Florida	PV	0.13	36.00
Georgia	None	0.12	30.00
Hawaii	None	0.01	7.00
Idaho	EDR	EDR	EDR
Illinois	None	0.42	51.00
Indiana	None	0.02	15.00
Iowa	PV	0.53	52.00
Kansas	PV	2.68	70.00
Kentucky	Affidavit	0.01	15.00
Louisiana	None	0.12	40.00
Maine	EDR	EDR	EDR
Maryland	PV	1.33	65.00
Massachusetts	None	0.08	23.00
Michigan	Affidavit	0.07	58.00
Minnesota	EDR	EDR	EDR
Mississippi	Affidavit		
Missouri	None	0.12	40.00
Montana	None	0.08	55.00
Nebraska	LPV	1.71	78.00
Nevada	None	0.29	40.00
New Hampshire	EDR	EDR	EDR
New Jersey	LPV	1.96	55.26
New Mexico	PV	1.16	57.00
New York	PV	3.27	40.30
North Carolina	PV	1.21	55.00
North Dakota	NR	NR	NR
Ohio	LPV	2.20	78.00
Oklahoma	None	0.01	8.00
Oregon	PV	0.39	85.00
Pennsylvania	None	0.45	49.00
Rhode Island	None	0.23	46.00
South Carolina	PV	0.20	65.00
South Dakota	None	0.02	12.00
Tennessee	None	0.14	38.00
Texas	Affidavit	0.10	21.00
Utah	None	2.00	70.00
Vermont	None	0.01	37.00
Virginia	PV	0.02	17.00
Washington	PV	2.44	80.00
West Virginia	PV	1.11	63.00
Wisconsin	EDR	0.00	32.00
States	PV Status Pre-HAVA	PV % of the Vote	PV % of the vote Counted
Wyoming	EDR	0.01	25.00

When did Eagleton get the information for Missouri. Missouri enacted provisional voting in 2002 and it is likely it was in place for the November 2002 election Pre-HAVA.

Eagleton's PV, LPV, EDR notations are confusing. In the instance of Colorado, the LPV designation (in the PV Status row - HAVA column is incorrect.) In Colorado the voter did not have to vote in the precinct.

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Table 2 -- Characteristics of State Provisional Voting Systems

<u>States</u>	<u>Was there a Statewide DB in 2004?</u>	<u>Are Outside Precincts Counted in Presidential Elections?</u>	<u>Verification Method</u>	<u>What is the time line for counting PV ballots?</u>	<u>Is this Review process open?</u>
Alabama	No	No	Check address & registration	7 days	unclear
Alaska	Yes	Yes	Signature	15 days	limited
Arizona	Yes	No	Check address & registration	10 days	unclear
Arkansas	No	Yes	Check address & registration	15 days	Unclear
California	No	Yes	Signature	28 days	yes
Colorado	No	Yes	Check address & registration	12 days	limited
Connecticut	Yes	No	Affidavit	6 days	unclear
Delaware	Yes	Yes	Affidavit	Until Completion	limited
D.C.	Yes	No	Check address & registration	*	limited
Florida	No	No	Signature	11 days	yes
Georgia	Yes	Yes	Affidavit	7 days	unclear
Hawaii	Yes	Yes	Affidavit	6 days	limited
Idaho	No	EDR	EDR	*	unclear
Illinois	No	Yes	Affidavit	14 days	unclear
Indiana	No	No	Bring ID later	13 days	yes
Iowa	No	No	Bring ID later	2 days	unclear
Kansas	No	Yes	Bring ID later	*	limited
Kentucky	Yes	No	Affidavit	3 days	unclear
Louisiana	Yes	Yes	DOB and Address	4 days	yes
Maine	No	EDR	EDR	*	unclear
Maryland	No	Yes	Bring ID later	*	unclear
Massachusetts	Yes	No	Affidavit	4 days	unclear
Michigan	Yes	No	Bring ID later	14 days	unclear
Minnesota	?	EDR	EDR	14 days	Unclear
Mississippi	No	No	Affidavit	*	yes
Missouri	No	No	Check address & registration	14 days	limited
Montana	No	No	Bring ID later	*	unclear
Nebraska	No	No	Affidavit	7 days	limited
Nevada	No	No	Affidavit	7 days	unclear
New Hampshire	No	EDR	EDR	*	unclear
New Jersey	No	No	Bring ID later	28 days	yes
New Mexico	Yes	Yes	Bring ID later	10 days	unclear
New York	No	No	Affidavit	10 days	yes
North Carolina	No	Yes	Varies	7 days	yes
North Dakota	NR	NR	NR	*	unclear
Ohio	No	No	Check address & registration	*	unclear
Oklahoma	Yes	No	Check address & registration	3 days	limited
Oregon	No	Yes	Signature	*	limited
Pennsylvania	No	Yes	Check address & registration	*	unclear
Rhode Island	No	Yes	Check address & registration	*	yes
South Carolina	Yes	No	Check address & registration	4 days	unclear
South Dakota	Yes	No	Affidavit	3 days	unclear
Tennessee	No	No	Affidavit	48 hours	unclear
Texas	No	No	Bring ID later	7 days	unclear
Utah	No	Yes	Bring ID later	*	unclear
Vermont	No	Yes	Affidavit	2 days	unclear

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<u>States</u>	<u>Was there a Statewide DB in 2004?</u>	<u>Are Outside Precincts Counted in Presidential Elections?</u>	<u>Verification Method</u>	<u>What is the time line for counting PV ballots?</u>	<u>Is this Review process open?</u>
Virginia	No	No	Affidavit	7 days	limited
Washington	No	Yes	Check address & registration	*	yes
West Virginia	Yes	No	Check address & registration	30 days	unclear
Wisconsin	No	No	Bring ID later	*	unclear
Wyoming	No	No	Affidavit	*	unclear

* Data to come on timeline classifications for these remaining states



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Table 4 -- Litigation and Statues

<u>States</u>	<u>Litigation pre-2004 election?</u>	<u>Litigation post-2004 election?</u>	<u>Were clarifying PV regulations promulgated post election 2004?</u>	<u>Type of Clarifications</u>
Alabama				
Alaska				
Arizona		Yes	Yes	Voter ID
Arkansas			Yes	Wrong precinct
California				
Colorado	Yes	Yes	Yes	Wrong precinct, timeline, counting
Connecticut				
Delaware				
D.C.				
Florida		Yes	Yes	Timeline, eligibility
Georgia			Yes	Voter ID
Hawaii				
Idaho				
Illinois				
Indiana			Yes	Voter ID, timeline, counting
Iowa				
Kansas				
Kentucky				
Louisiana			Yes	Counting
Maine				
Maryland				
Massachusetts				
Michigan		Yes		
Minnesota				
Mississippi				
Missouri				
Montana			Yes	Eligibility
Nebraska				
Nevada				
New Hampshire				
New Jersey				
New Mexico			Yes	Counting
New York		Yes		
North Carolina		Yes	Yes	Wrong precinct, counting
North Dakota				
Ohio	Yes	Yes		
Oklahoma				
Oregon				
Pennsylvania				
Rhode Island				
South Carolina				
South Dakota				
Tennessee				
Texas				
Utah				

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<u>States</u>	<u>Litigation pre-2004 election?</u>	<u>Litigation post-2004 election?</u>	<u>Were clarifying PV regulations promulgated post election 2004?</u>	<u>Type of Clarifications</u>
Vermont				
Virginia			Yes	Timeline, voter notification
Washington	Yes	Yes	Yes	Voter ID, timeline, counting
West Virginia				
Wisconsin				
Wyoming				

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Table 3 -- Information for Voters

Provided on State Elections Website?					
States	PV Requirements	VID Requirements	Registration Verification	Precinct Verification	Notification of Voters
Alabama	No	Yes	No	No	Phone
Alaska	No	Yes	No	Yes	Phone
Arizona	No	No	No	No	Counties
Arkansas	Yes	No	No	No	Counties
California	Yes	No	No	Yes	Counties
Colorado	Yes	Yes	No	No	Counties
Connecticut	Yes	Yes	No	No	Phone
Delaware	Yes	No	No	Yes	Website
D.C.	Yes	No	Yes	Yes	Website
Florida	No	Yes	No	No	Counties
Georgia	No	Yes	Yes	Yes	Counties
Hawaii	No	Yes	No	Yes	Phone
Idaho	EDR	Yes	No	No	EDR
Illinois	Yes	No	No	No	Website
Indiana	No	No	No	No	Phone
Iowa	Yes	Yes	No	No	Mail
Kansas	Yes	No	No	No	Counties
Kentucky	Yes	No	Yes	Yes	Website
Louisiana	Yes	No	No	Yes	Phone
Maine	EDR	Yes	No	Yes	EDR
Maryland	Yes	Yes	No	No	Website/Phone
MA	Yes	No	No	Yes	Phone
Michigan	Yes	Yes	Yes	Yes	Mail
Minnesota	EDR	Yes	No	Yes	EDR
Mississippi	No	No	No	No	Counties
Missouri	Yes	Yes	No	No	Phone
Montana	No	Yes	No	No	Mail
Nebraska	No	No	No	No	Website/Phone
Nevada	No	No	No	No	Website/Phone
New Hampshire	EDR	No	No	No	EDR
New Jersey	Yes	Yes	No	No	Website/Phone
New Mexico	Yes	Yes	No	No	Phone
New York	No	No	No	No	Mail
North Carolina	No	No	Yes	Yes	Website
North Dakota	NR	Yes	NR	No	NR
Ohio	Yes	Yes	No	No	Phone
Oklahoma	No	Yes	No	No	Phone
Oregon	No	No	No	No	Phone
Pennsylvania	Yes	Yes	No	No	Phone
Rhode Island	Yes	Yes	No	No	Website
South Carolina	Yes	Yes	Yes	No	Website
South Dakota	Yes	No	No	Yes	Mail
Tennessee	No	No	No	No	Mail
Texas	Yes	Yes	No	No	Mail
Utah	Yes	Yes	No	Yes	Phone
Vermont	No	Yes	No	Yes	Phone
Virginia	Yes	Yes	No	Yes	Phone
Washington	No	Yes	No	No	Counties
Provided on State Elections Website?					
States	PV Requirements	VID Requirements	Registration Verification	Precinct Verification	Notification of Voters
West Virginia	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

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Karen Lynn-Dyson/EAC/GOV
06/28/2006 11:42 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV
cc
bcc
Subject Fw: Survey report

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:41 AM -----



"John Weingart"

09/30/2005 03:02 PM

Please respond to

To "Karen Lynn-Dyson"

cc

Subject Survey report



Provisional Voting Survey Report.doc Karen - Thanks for the very helpful phone call. Attached is the Survey Report. Let me know if you have trouble opening it or need any clarification or further information. Thanks and have a good weekend.

John

--
-- John Weingart, Associate Director
Eagleton Institute of Politics
(732) 932-9384, x.290

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XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

**Deliberative Process
Privilege**

**NATIONAL SURVEY
OF
LOCAL ELECTION OFFICIALS'
EXPERIENCES WITH PROVISIONAL VOTING**

Conducted by:
Eagleton Institute of Politics

Conducted by:
THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS
Eagleton Institute of Politics
Center for Public Interest Polling

Data Collection:
July-August 2005

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**NATIONAL SURVEY
OF
LOCAL ELECTIONS OFFICIALS'
EXPERIENCES WITH PROVISIONAL VOTING**

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**EXECUTIVE SUMMARY: NATIONAL SURVEY OF
LOCAL ELECTION OFFICIALS'
EXPERIENCES WITH PROVISIONAL VOTING**

To assess and improve the experiences of local elections officials with provisional voting, the Eagleton Center for Public Interest Polling (ECPIP) at the Eagleton Institute of Politics, Rutgers University conducted a national survey of local elections officials. Telephone interviews were conducted between July 21 and August 4, 2005 with a random sample of 400 local election officials. The sample of local election officials were drawn from counties, or equivalent election jurisdictions such as boroughs, municipalities, parishes, towns or cities. The sample of local election officials was then stratified according to when the state had enacted provisional voting systems -- before or after the passage of the Help America Vote Act of 2002 (HAVA) -- as well as the population size of the voting jurisdiction. Those states that offered voters lost in the system the opportunity to cast a ballot pre-HAVA (2002) were considered "old provisional voting states"; and the states where voters not found on the registration list were not offered any recourse and thus, were not permitted to vote in the 2000 Election were labeled "new provisional voting states."

Further adjustments were made to take into consideration the population size of the voting jurisdiction. The "Old" and "New" states were separated into three categories -- small, medium, and large -- based on the population size of the voting jurisdiction. A voting jurisdiction with a population of 49,999 or less was considered small, 50,000 to 199,999

regarded as medium, and large consisted of 200,000 or more. This sampling frame yielded 400 cases (196 Old; 204 New)¹ consisting of six sample types: New Small (n=83), Old Small (n=71), New Medium (n=83), Old Medium (n=75), New Large (n=38), and Old Large (n=50).

The survey addressed the following topics: experience with the administration of provisional voting system, state guidance for implementing provisional voting, implementing provisional voting, general perceptions, and recommendations for the future. This Executive Summary provides an overview of key findings from the study.

Experiences with Provisional Voting System in Jurisdiction

Survey participants were asked a number of questions regarding their general experience with provisional voting.

- A majority of the “New” states’ election officials (62%), and nearly twice as many as the “Old” (33%), indicated that “100 or less ballots” were cast in the election jurisdiction. A significantly larger percentage (14%) of the “Old” (28%) estimated that “between 100 to just under 500” provisional ballots were cast.
- Most (61%) of the “Old” states reported that “A lot” of these provisional ballots were counted compared to only 19 percent for the “New” states. A

¹ At the studies conclusion it was determined that Rhode Island’s affidavit voting system did not meet the criteria for placement in the Old State status and thus, the state was reassigned as “New.” The reassignment of local election respondents representing Rhode Island resulted in a 49 (Old)/51 (New) split, rather than half of the sample being drawn from “Old” and half from “New.” Unlike the other states (AL, KY, MI, MS, TX) with affidavit voting systems in place pre-HAVA, Rhode Island did not offer voters any real recourse to cast a ballot if the individual’s name was not listed on the registration rolls. Instead, the state allowed voter’s claiming eligibility, but not found on the registration rolls, to sign an affidavit enabling the election official to call the central registrar to verify the voter’s eligibility. Only if the voter’s name was found on the list was he or she permitted to cast a ballot.

much larger percentage of the “New” subgroup felt that only “Some” (32%) or “Very Few” (32%) provisional ballots were actually counted.

- A sizeable majority of both subgroups (Old=64%, New=77%) attributed the most need for the use of provisional ballots in their jurisdiction to “individual’s name not listed on the voter registration rolls.”
- More than 7-in-10 in both subgroups agreed that “individuals who were not registered at the time of casting their provisional ballots” constituted the most important reason that these ballots were not validated and counted in their jurisdiction.

State Guidance for Implementing Provisional Voting

- A sizeable majority of both subgroups (Old=85%, New=83%) received provisional voting instruction from their state governments.
- Appreciable differences in the type of instruction received involved “whether the provisional ballot could be used as an application to update the voter’s registration” (Old=74%; New 59%); “guidelines for determining which provisional ballots were to be counted” (Old=87%; New=94%); and “how to design the structure of the provisional ballot (Old=71%; New 57%).”
- Overall, 98 percent of both subgroups found the voting instructions they received from the state government useful.

Implementing Provisional Voting in Jurisdiction

- When asked to describe the instructions or information provided to poll workers to help determine voters correct precinct or polling place, both

subgroups employed various strategies including access to a list of eligible voters (Old=81%; New 80%), dedicated telephone line for poll workers (Old=93%; New=91%), and additional staff such as “greeters” (Old=46%; New=42%). Very few election officials in both (Old=11%, New=12%) reported the existence of a statewide voter registration database.

- A much larger percentage (70%) of “Old” states’ election officials compared with 50 percent of the “New” used maps to help identify correct polling locations.
- 14 percent of all the election officials said that they did not provide written procedures or training to poll workers for the counting of provisional ballots. However, overall both subgroups felt that the administration of provisional voting in their jurisdiction was a success on all accounts.
- A variety of measures were employed to enable voters to determine if their provisional ballots were counted. In both subgroups the most widely used method was “the main telephone for the local or county election office” with 66 percent of the New compared to 75% of the Old indicating this method was provided.
- The measure least cited for voters to determine if their provisional ballots were counted was “email notification.” Only 10% reported that the election jurisdiction offered voters this opportunity.

General Perceptions

- Close to half (40%) of the election officials felt more training for poll workers was needed.

- 39 percent of the “New” states’ election officials agreed that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted compared to 28% of the “Old”.
- 13 percent more of the election officials from “New” states (39%) reported that more time was needed to implement provisional voting procedures.
- Only about half (56%) of the “New” states’ election officials reported the provisional voting system was easy to implement while 73 percent from the “Old” found this to be the case.
- Seventeen percent more of the “Old” states’ election officials (75%) agreed that the provisional voting system in their polling jurisdiction enabled more people to vote.

Recommendations for the Future

Survey participants were asked a number of questions regarding their general level of agreement with several statements regarding provisional voting.

- More election officials from “Old” states agreed that provisional voting sped up and improved polling place operations on Election Day (Old=53%; New=41%); and that the process helped election officials maintain more accurate registration databases (Old=63%; New=38%).
- 60 percent of the “New” states’ election officials agreed that provisional voting created unnecessary problems for election officials and poll workers, compared with only 42% of the “Old.”

- A majority of both subgroups agreed that “there is a need to offer voters the opportunity to cast provisional ballots.” However, a 19 percent differential exists between the two subgroups (Old=81%; New=62%).
- A slightly larger percentage (9%) of the “Old” states’ election officials (93%) felt that the provisional voting system in their polling jurisdiction was a success.
- Forty percent of the local election officials felt that the most effective way to increase the number of provisional ballots validated and counted in an election would be to administer provisional voting in a central location rather than at individual polling places.
- When asked what would be most effective in reducing the number of provisional ballots cast in an election, most (28%) of the local election officials chose providing a state sponsored website for individuals to check registration status online before going to the polling place. A slightly smaller number (26%) favored having a statewide voter registration database available at polling places.

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CHAPTER 1
INTRODUCTION

A. Project Background and Objectives

To assess and improve the experiences of local election officials with provisional voting, the Eagleton Center for Public Interest Polling (ECPIP) at the Eagleton Institute of Politics, Rutgers University conducted a national survey of local elections officials.

The study was designed to examine the experiences, attitudes, and general impressions of local election officials with implementing provisional voting. Specifically, the study sought to ascertain the type of information, guidance, and training local election officials received from the State government in administering provisional voting, and how the information, guidance, and training was then distributed to poll workers and voters.

B. Summary of the Research Methodology

The survey involved telephone interviews conducted between July 21 and August 4, 2005 with a random sample of 400 local election officials. The sampling error for this total sample of 400 is ± 4.9 percent at a 95 percent confidence level. Of these local election officials, 196 were selected to represent “old provisional voting states” and 204 for “new provisional voting states.”² These subgroups have a sampling error of ± 6.9 percent for the “New” and ± 7.0 for the “Old” at a 95 percent confidence level.

Sampling error is the probability difference in results between interviewing everyone in a population versus interviewing a scientific sample taken from that population. Sampling error does not take into account any other possible sources of error inherent in any study of

² See footnote 1.

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public opinion. A more comprehensive description of the research methodology is included in Appendix A.

C. Profile of Survey Participants

Table 1.1 provides a profile of survey participants by status including the entire sample of counties or equivalent and the subgroups within the “Old” or “New” status. The subgroup definitions of “Old” and “New” were provided by a report released by Election Line titled “The Provisional Voting Challenge” (December, 2001). The “New” states include: Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Missouri, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota, Tennessee, Utah, and Vermont; and the “Old” states include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Washington D.C., Florida, Iowa, Kansas, Kentucky, Maryland, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, and West Virginia.

D. Organization of the Report

The next chapter of this report examines the substantive survey results illustrated by statistical tables. The exact question wording precedes the table summarizing the percentages of the actual responses provided by the local election officials. In most cases the percentages on the tables read from top to bottom with the total equal to a 100 percent. In instances where there is statistical rounding, the total may be more or less than 100 percent.

The tables will also report the sample size “(n)” for each group referenced in the table. The “(n)” is the actual number of people in the group upon which the percentages are

based. Readers should be aware of the “(n)” when referencing the percentages on a table. Smaller subgroups will have a higher margin of sampling error. Therefore, in some cases what may appear to be a large difference between groups is a result of the larger sampling error and may not be statistically significant.

Following the statistical tables there are four appendices. Appendix A provides additional information about the survey methodology so that interested readers may have a better understanding of the process used to obtain the data. Appendix B consists of the pre-notification letter explaining the purpose of the study and inviting local election officials to participate in the study if called. The text of the questions asked in the survey and used in the analysis of the data is contained in Appendix C. The verbatim responses (as recorded by the interviewers) to open-end questions included in the survey are found in Appendix D.

TABLE 1.1
 PROFILE OF SURVEY PARTICIPANTS BY STATUS

	<u>TOTAL</u>	<u>OLD PV STATES</u>	<u>NEW PV STATES</u>
<u>Gender</u>			
--Male	29%	30%	28%
--Female	71	71	72
<u>Title</u>			
Administrator of Elections	10	5	14
Chairman of Elections	3	5	1
Clerk of Court	2	1	4
Commissioner of Elections	7	15	--
County Clerk	17	16	18
Director of Elections	16	20	12
Registrar of Elections	8	8	8
Secretary of Elections	3	1	5
Supervisor of Elections	7	7	8
Town Clerk	4	2	6
Other	25	23	27
<u>Position</u>			
--Hired	14	16	12
--Appointed	42	41	44
--Promoted	2	1	3
--Elected	42	42	42
--Other	1	1	1
<u>Years Worked</u>			
--Less than one year	1	2	1
--1-10 years	49	49	50
--11-20 years	34	37	32
--21-30 years	12	11	14
--31-43 years	3	3	4
<u>Region</u>			
--West	17	14	20
--South	29	28	30
--Midwest	46	48	44
--Northeast	9	11	7
<u>Statewide Registration</u>			
--Yes	34	20	48
--No	66	81	52
<u>Battleground State</u>			
--Yes	17	19	14
--No	84	81	86

TABLE 2.1
EXPERIENCE WITH
PROVISIONAL VOTING SYSTEM
IN JURISDICTION [Q.3-6]

3. What is your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

	Old versus New		(n)
	Old	New	
1 to less than 100	33%	62%	(191)
Between 100 to just under 500	28	14	(82)
Between 500 to just under 1000	12	5	(35)
1000 or more	19	9	(57)
(VOL) None/Zero	7	9	(31)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(--)
	100	100	(400)

***statistically significant at the .000 level.

4. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

	Old versus New		(n)
	Old	New	
A lot	61%	19%	(146)
Some	17	32	(90)
Very few	18	32	(91)
None at all	4	17	(38)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(--)
	101	101	(369)

***statistically significant at the .000 level.

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5. In your opinion, which one of the following, if any, created the most need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

	Old versus New		(n)
	Old	New	
Individual's name not listed on the voter registration rolls	64%	77%	(260)
FIRST TIME voters couldn't provide the proper identification	5	7	(21)
Voter's eligibility challenged	12	5	(30)
Registered voters could not provide the proper identification	4	7	(19)
(VOL) Other (SPECIFY)	14	4	(32)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	1	---	(1)
	102	102	(369)

***statistically significant at the .01 level.

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

	Old versus New		(n)
	Old	New	
Individual failed to provide the identification required to validate the provisional ballot	2%	3%	(10)
Signature on the provisional ballot did not match the signature on the registration form	1	---	(1)
Provisional ballot cast in the incorrect voting precinct	16	10	(48)
Individual was not registered	75	76	(280)
(VOL) All provisional ballots were validated and counted in 2004 Election	2	4	(12)
(VOL) Other (SPECIFY)	3	4	(13)
(VOL) Don't Know	1	2	(5)
(VOL) Refused	---	---	(---)
	100	99	(369)

TABLE 2.2
 PRE-ELECTION EXPERIENCE:
 STATE INSTRUCTION AND INFORMATION [Q.7-13]

7. Were provisional voting instructions provided by the state government for the 2004 Election?

	Old versus New		(n)
	Old	New	
Yes	85%	83%	(335)
No	14	17	(63)
(VOL) Don't know	1	---	(2)
(VOL) Refused	---	---	(---
	100	100	(400)

8. Which of the following provisional voting instructions, if any, did you receive from the state government?

	Old versus Old	New New	(n=335)
How to administer the provisional voting system	90%	91%	(303)
Who is eligible to vote using a provisional ballot	93	92	(310)
How individuals vote using a provisional ballot	90	85	(292)
The jurisdiction where individuals can vote by provisional ballot	78	80	(265)
Whether the provisional ballot could be used as an application to update the voter's registration*** ***statistically significant at the .01 level.	74	59	(222)
How to train poll workers to process provisional ballots	89	88	(295)
How to provide voters with the opportunity to verify if their provisional ballot was counted	92	90	(304)
Guidelines for determining which provisional ballots are to be counted*** ***statistically significant at the .05 level.	87	94	(304)
Strategies to reduce the need for voters to use provisional ballots	54	54	(182)
How to design the structure of the provisional ballot*** ***statistically significant at the .05 level.	71	57	(213)
Other (VOL)	---	---	(--)
All of the above (VOL)**	---	---	(22**)
None of the above (VOL)	---	---	(--)
Don't Know (VOL)	1	2	(5)
Refused (VOL)	---	---	(--)

**included in totals above.

9. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the jurisdiction where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION ON THE JURISDICTION WHERE INDIVIDUALS CAN VOTE BY PROVISIONAL BALLOT IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	3%	(6)
Useful	96	95	(253)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	---	---	(--)
	100	100	265

10. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION ON HOW TO PROVIDE VOTERS WITH THE OPPORTUNITY TO VERIFY IF THEIR PROVISIONAL BALLOT WAS COUNTED IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	1%	(4)
Useful	97	96	(293)
(VOL) Don't Know	1	3	(7)
(VOL) Refused	---	---	(--)
	100	100	(304)

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11. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing guidelines for determining which provisional ballots are to be counted -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION FOR ESTABLISHING GUIDELINES FOR DETERMINING WHICH PROVISIONAL BALLOTS ARE TO BE COUNTED IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	2%	3%	(8)
Useful	97	96	(293)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	---	---	(---)
	100	100	(304)

12. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were for establishing strategies to reduce the need for voters to use provisional ballots -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION FOR ESTABLISHING STRATEGIES TO REDUCE THE NEED FOR VOTERS TO USE PROVISIONAL BALLOTS IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	7%	8%	(13)
Useful	90	92	(166)
(VOL) Don't Know	3	---	(3)
(VOL) Refused	---	---	(---)
	100	100	(182)

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13. Thinking generally, overall how useful were the provisional voting instructions you received from the state government -- very useful, somewhat useful, not very useful, or not useful at all?

[ASKED ONLY AMONG THOSE WHO SAID RECEIVED STATE INSTRUCTION IN Q8]

	Old versus New		(n)
	Old	New	
Not useful	1%	1%	(4)
Useful	98	98	(324)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(--)
	100	100	(330)

TABLE 2.3
IMPLEMENTATION OF INSTRUCTIONS AND
DISTRIBUTION OF INFORMATION TO ELECTION EMPLOYEES [Q.14-21]

14. Please tell me which of the following, if any, was provided in your jurisdiction for the 2004 Election to help poll workers determine voters' assigned precinct and polling place?

	Old versus New		(n=400)
	Old	New	
Access to a list of eligible voters in the jurisdiction	81%	80%	(322)
Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	90	93	(365)
Maps of adjacent precincts for poll workers to help voters locate their residence and corresponding polling place***	70	50	(239)
***statistically significant at the .001 level.			
Additional staff such as "greeters" at polling places to direct voters to the correct polling location	46	42	(176)
Statewide voter registration database available at polling places	11	12	(46)
Other (VOL)	1	---	(1)
None of the above (VOL)	2	1	(6)
Don't Know (VOL)	---	1	(2)
Refused (VOL)	---	---	(---)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?]

(READ AND ROTATE Q.15 – Q.21)

15. Providing training to poll workers on how to administer provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	1%	2%	(5)
Successfully	96	95	(382)
(VOL) Didn't perform this activity	3	3	(11)
(VOL) Don't Know	---	1	(2)
(VOL) Refused	---	---	(--)
	100	101	(400)

16. Providing written procedures to poll workers on how to administer provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	2%	(7)
Successfully	93	94	(373)
(VOL) Didn't perform this activity	4	3	(14)
(VOL) Don't Know	2	1	(5)
(VOL) Refused	---	1	(1)
	101	101	(400)

17. Providing your local election officials with written procedures on the casting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	1%	(4)
Successfully	95	94	(378)
(VOL) Didn't perform this activity	2	4	(13)
(VOL) Don't Know	2	1	(4)
(VOL) Refused	---	1	(1)
	101	101	(400)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?] (cont'd.)

18. Providing your local election officials with written procedures on the counting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	2%	1%	(5)
Successfully	81	85	(333)
(VOL) Didn't perform this activity	16	12	(56)
(VOL) Don't Know	2	1	(4)
(VOL) Refused	---	1	(2)
	101	100	(400)

19. Providing your local election officials training for the counting of provisional ballots.

	Old versus New		(n)
	Old	New	
Not successfully	1%	3%	(7)
Successfully	80	87	(334)
(VOL) Didn't perform this activity	18	10	(56)
(VOL) Don't Know	1	---	(2)
(VOL) Refused	---	1	(1)
	100	101	(400)

20. Making information available to help poll workers determine voters' assigned precinct or polling place.

	Old versus New		(n)
	Old	New	
Not successfully	2%	3%	(11)
Successfully	92	91	(367)
(VOL) Didn't perform this activity	5	5	(20)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	100	100	(400)

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed: [PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?] (cont'd.)

21. Providing training to help poll workers determine voters' assigned precinct or polling place.

	Old versus New		(n)
	Old	New	
Not successfully	2%	2%	(7)
Successfully	92	88	(360)
(VOL) Didn't perform this activity	6	8	(27)
(VOL) Don't Know	1	2	(6)
(VOL) Refused	---	---	(---)
	101	100	(400)

TABLE 2.4
 POST-ELECTION EXPERIENCE:
 COUNTING BALLOTS [Q.22-25]

22. After the 2004 Election, which of the following, if any, did your jurisdiction offer voters to determine if their provisional ballot was counted?

(ACCEPT MULTIPLE RESPONSES; READ AND ROTATE LIST)

	Old versus New		(n=400)
	Old	New	
Notification by mail	50%	45%	(188)
Dedicated Toll-Free Telephone Hotline	42	36	(156)
Email notification	13	9	(43)
Website confirmation	21	24	(90)
Main telephone number for the local or county election office	75	66	(281)
All of the above (VOL)	**	**	**
None of the above (VOL)	3	6	(17)
Other (VOL)	1	1	(2)
Don't Know (VOL)	1	1	(3)
Refused (VOL)	---	---	(---

**included in the totals above.

23. How confident are you that poll workers properly distributed provisional ballots to voters?

[Q23-25 - ASKED ONLY AMONG THOSE WHO GAVE BEST ESTIMATE OF TOTAL NUMBER OF PROVISIONAL BALLOTS CAST IN THE 2004 ELECTION (Q3=1-4)]

	Old versus New		(n)
	Old	New	
Not confident	4%	6%	(18)
Confident	93	93	(344)
(VOL) Don't Know	3	1	(7)
(VOL) Refused	---	---	(---)
	100	100	(369)

24. How confident are you that election officials accurately assessed and validated provisional ballots?

	Old versus New		(n)
	Old	New	
Not confident	2%	2%	(7)
Confident	95	95	(350)
(VOL) Don't Know	3	3	(10)
(VOL) Refused	1	1	(2)
	101	101	(369)

25. How confident are you that the validated provisional ballots were accurately included in the final vote count?

	Old versus New		(n)
	Old	New	
Not confident	1%	---	(1)
Confident	99	98	(363)
(VOL) Don't Know	1	2	(5)
(VOL) Refused	---	---	(---)
	101	100	(369)

023399

TABLE 2.5
GENERAL PERCEPTIONS [Q.26-35]

26. Now I am going to read you a list of items, please tell me which one you believe presented the biggest challenge in implementing provisional voting in your jurisdiction for the 2004 Election. (POSSIBLY BIGGEST PROBLEM)

(READ AND ROTATE 1-4)

	Old versus New		(n)
	Old	New	
Training of poll workers	38%	42%	(160)
Length of time provided before the election to implement the provisional voting process	13	14	(53)
Clarity of instruction received from your State Government	5	8	(27)
Having enough staff at the polling place	9	14	(46)
(VOL) Other (SPECIFY)	5	3	(15)
(VOL) All of the above	2	3	(9)
(VOL) None of the above	26	16	(83)
(VOL) Don't Know	3	1	(7)
(VOL) Refused	---	---	(--)
	101	101	(400)

Please tell me how much you agree or disagree with the following statements about Provisional voting in your jurisdiction for the 2004 Election. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

(READ AND ROTATE Q.27 –Q.35)

27. More training was needed on how to administer the provisional voting process.

	Old versus New		(n)
	Old	New	
Disagree	54%	46%	(200)
Neither Agree nor Disagree	6	5	(22)
Agree	38	49	(174)
(VOL) Don't Know	2	---	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

28. More funding was needed to educate voters about their rights to cast a provisional ballot.

	Old versus New		(n)
	Old	New	
Disagree	50%	43%	(185)
Neither Agree nor Disagree	11	12	(45)
Agree	39	45	(168)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(---)
	101	101	(400)

29. More information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted.

	Old versus New		(n)
	Old	New	
Disagree	62%	50%	(222)
Neither Agree nor Disagree	8	8	(32)
Agree	28	39	(133)
(VOL) Don't Know	3	4	(13)
(VOL) Refused	---	---	(---)
	101	101	(400)

***statistically significant at the .05 level.

30. More information was needed for poll workers to determine the voter's assigned precinct and polling place.

	Old versus New		(n)
	Old	New	
Disagree	68%	63%	(261)
Neither Agree nor Disagree	7	5	(25)
Agree	23	29	(104)
(VOL) Don't Know	2	3	(10)
(VOL) Refused	---	---	(---)
	100	100	(400)

31. More time was needed to implement provisional voting procedures.

	Old versus New		(n)
	Old	New	
Disagree	66	55	(242)
Neither Agree nor Disagree	7	5	(24)
Agree	26	39	(130)
(VOL) Don't Know	1	1	(4)
(VOL) Refused	---	---	(---)
	100	100	(400)

***statistically significant at the .05 level.

32. The provisional voting system was easy to implement.

	Old versus New		(n)
	Old	New	
Disagree	24%	35%	(117)
Neither Agree nor Disagree	3	9	(25)
Agree	74	56	(258)
(VOL) Don't Know	---	---	(---)
(VOL) Refused	---	---	(---)
	101	100	(400)

***statistically significant at the .01 level.

33. The provisional voting system in my polling jurisdiction enabled more people to vote.

	Old versus New		(n)
	Old	New	
Disagree	19%	29%	(97)
Neither Agree nor Disagree	4	12	(32)
Agree	75	58	(266)
(VOL) Don't Know	2	1	(5)
(VOL) Refused	---	---	(--)
	100	100	(400)

***statistically significant at the .01 level.

34. I feel that voters in my jurisdiction were provided adequate information to successfully cast a provisional ballot.

	Old versus New		(n)
	Old	New	
Disagree	3%	5%	(17)
Neither Agree nor Disagree	2	4	(12)
Agree	93	91	(368)
(VOL) Don't Know	2	---	(3)
(VOL) Refused	---	---	(--)
	100	100	(400)

35. Adequate support was provided to me to assist in the implementation of provisional voting.

	Old versus New		(n)
	Old	New	
Disagree	7%	11%	(37)
Neither Agree nor Disagree	2	8	(20)
Agree	91	81	(343)
(VOL) Don't Know	---	---	(--)
(VOL) Refused	---	---	(--)
	100	100	(400)

***statistically significant at the .01 level.

TABLE 2.6

RECOMMENDATIONS
FOR THE FUTURE [Q.36-46]

36. Now I am going to read you a list of items. Please tell me which one you believe is the most important change needed in the implementation of provisional voting.

(RANDOMLY ROTATE 1-4)

	Old versus New		(n)
	Old	New	
More funding for poll worker training	24%	34%	(116)
More time for poll worker training	18	18	(72)
Clearer instruction from the Federal Government	19	18	(75)
Clearer instruction from the State Government	14	9	(47)
(VOL) Other (SPECIFY)	6	3	(19)
(VOL) All of the above	1	3	(7)
(VOL) None of the above	15	12	(55)
(VOL) No changes needed	2	1	(6)
(VOL) Don't Know	---	2	(3)
(VOL) Refused	---	---	(---)
	99	100	(400)

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

(READ AND ROTATE Q.37-Q.44)

37. A statewide voter registration database, accessible to poll workers on Election Day, would decrease the need for voters to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	43%	35%	(155)
Neither Agree nor Disagree	7	6	(26)
Agree	49	56	(210)
(VOL) Don't Know	2	3	(9)
(VOL) Refused	---	---	(--)
	101	100	(400)

38. A state-sponsored website designed for individuals to check registration status online, before going to the polling place on Election Day, would decrease the need for voters to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	24%	23%	(93)
Neither Agree nor Disagree	6	5	(22)
Agree	68	70	(277)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	1	---	(1)
	101	100	(400)

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat? (cont'd.)

39. Provisional voting speeds up and improves polling place operation on Election Day by resolving disputes between voters and poll workers.

	Old versus New		(n)
	Old	New	
Disagree	40%	55%	(190)
Neither Agree nor Disagree	6	3	(18)
Agree	53	41	(188)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	1	---	(1)
	101	100	(400)

40. Provisional voting helps election officials maintain more accurate registration databases.

	Old versus New		(n)
	Old	New	
Disagree	31%	49%	(161)
Neither Agree nor Disagree	4	11	(31)
Agree	63	38	(201)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	---	---	(--)
	100	100	(400)

***statistically significant at the .000 level.

41. Provisional voting creates unnecessary problems for election officials and poll workers.

	Old versus New		(n)
	Old	New	
Disagree	52%	34%	(171)
Neither Agree nor Disagree	5	5	(20)
Agree	42	60	(206)
(VOL) Don't Know	1	1	(3)
(VOL) Refused	---	---	(--)
	100	100	(400)

***statistically significant at the .01 level.

023406

In general, please tell me how much you agree or disagree with the following statements about provisional voting. [IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat? (cont'd.)

42. Provisional voting can be avoided by simplifying registration procedures.

	Old versus New		(n)
	Old	New	
Disagree	55%	43%	(195)
Neither Agree nor Disagree	6	5	(23)
Agree	38	50	(176)
(VOL) Don't Know	2	2	(6)
(VOL) Refused	---	---	(--)
	101	100	(400)

43. There is a need to offer voters the opportunity to cast provisional ballots.

	Old versus New		(n)
	Old	New	
Disagree	17%	31%	(98)
Neither Agree nor Disagree	2	6	(15)
Agree	81	62	(285)
(VOL) Don't Know	---	1	(2)
(VOL) Refused	---	---	(--)
	100	100	(400)

***statistically significant at the .001 level.

44. The provisional voting system in my polling jurisdiction was a success.

	Old versus New		(n)
	Old	New	
Disagree	5%	8%	(27)
Neither Agree nor Disagree	2	7	(18)
Agree	93	84	(353)
(VOL) Don't Know	1	1	(2)
(VOL) Refused	---	---	(--)
	101	100	(400)

***statistically significant at the .05 level.

45. Which one of the following do you think would be the most effective in increasing the number of provisional ballots validated and ultimately counted in an election?

(RANDOMLY ROTATE 1-3)

	Old versus New		(n)
	Old	New	
In-precinct provisional voting only	21%	18%	(79)
Provisional voting from a central location rather than in individual polling places	37	44	(161)
In-jurisdiction provisional voting only	21	18	(77)
(VOL) Other (SPECIFY)	1	3	(7)
(VOL) All of the above	1	1	(2)
(VOL) None of the above	15	8	(47)
(VOL) Don't Know	4	9	(27)
(VOL) Refused	---	---	(---)
	100	101	(400)

46. Which one of the following do you think would be the most effective in reducing the number of provisional ballots cast in an election?

(RANDOMLY ROTATE 1-5)

	Old versus New		(n)
	Old	New	
Having a statewide voter registration database available at polling places	22%	30%	(105)
Providing additional staff such as “greeters” at polling places to direct voters to the correct polling location	6	6	(24)
Providing a state sponsored website to enable individuals to check registration status online before going to the polling place	30	27	(113)
Providing poll workers access to an updated printed list of eligible voters in the jurisdiction	5	5	(20)
Providing a dedicated telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	14	18	(63)
(VOL) Other (SPECIFY)	—	1	(2)
(VOL) All of the above	4	3	(14)
(VOL) None of the above	16	9	(51)
(VOL) Don't Know	2	2	(7)
(VOL) Refused	—	1	(1)
	99	102	(400)

APPENDIX A:
SURVEY METHODOLOGY

I. INTRODUCTION

This survey represents a joint venture of two programs – the Eagleton Institute of Politics, Rutgers University and the Eagleton Institute’s Center for Public Interest Polling (ECPIP). This survey was designed to assess and improve the experiences of local elections officials with provisional voting.

II. QUESTIONNAIRE DEVELOPMENT

The questionnaire was developed for telephone administration by ECPIP researchers in consultation with Eagleton staff. The draft questionnaire was pretested with a random group of local election officials that yielded five completes. Only minor changes were made from that version and no further pretest was needed.

The questionnaire interview length averaged 18.4 minutes. An annotated version of the final survey instrument is included in this report (see Appendix C).

The questionnaire was programmed into a CATI (Computer Assisted Telephone Interviews) software system known as Quancept. The system facilitates the loops, rotations, randomization, and complex skip patterns found in this survey instrument. The programming was extensively checked and all logical errors were corrected.

III. SAMPLE DESIGN

A random national sample was compiled based on information acquired from the State Board of Elections in each of the 50 States and the District of Columbia. In all, 3,820

local election officials were eligible to participate in the study. To enhance compliance rates, pre-notification letters were sent to 2,471 of the local election officials. These letters explained the study's objectives and asked for the officials' participation in the study if contacted by an interviewer. Overall, 1,018 were contacted by telephone to participate in the study and among these, a total of 400 local election officials agreed to participate in the study.

The "Old" and "New" states were separated into three categories – small, medium, and large – based on the population size of the voting jurisdiction. A voting jurisdiction with a population of 49,999 or less was considered small, 50,000 to 199,999 regarded as medium, and large consisted of 200,000 or more. The sample was designed to make sure that each of the six sample types: New Small (n=83), Old Small (n=71), New Medium (n=83), Old Medium (n=75), New Large (n=38), and Old Large (n=50) were represented in the study. Overall, the survey yielded a response rate of 30 percent for the "Old" state sample and 53 percent for the "New" state sample.

APPENDIX B:

PRE-NOTIFICATION LETTER

DATE

NAME

TITLE

ADDRESS

CITY STATE ZIP

Dear NAME,

Rutgers, The State University of New Jersey, is conducting a national survey of elections officials' experiences with provisional voting in the 2004 national election. Through this survey we will learn the perspective of those who administer elections. It will improve our understanding of the process as we complete a broad research project on provisional voting in the context of effective election administration, voter access, and ballot security. The findings of the project will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006.

The EAC was established by the Help America Vote Act (HAVA) of 2002. It is an independent, bipartisan, federal agency that provides federal funds to states to upgrade voting systems and improve election administration. The EAC publishes voluntary guidelines for the states and serves as a national clearinghouse of information regarding election administration. The EAC is funding the research project.

Participants in this study will be selected randomly and asked to share their experiences administering the provisional voting process in the 2004 election. The study will be conducted July 18th through August 5th. During that period a survey researcher may call you if you are, in fact, chosen at random from a national list of election officials. The researcher will ask you questions about your experience with provisional voting, your evaluation of the process, and your recommendations to improve it. The survey will take approximately 10-15 minutes. All of your answers will be completely confidential, and no statement or comment you make will be ascribed to you.

At the conclusion of the research project, we will present a report to the EAC including analysis of provisional voting procedures as well as recommendations for future practices and procedures. The guidance document based on our research will be published by the EAC in the Federal Register for public review and comment, and the EAC will hold a hearing on the guidance document this fall before adopting it.

Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We hope you will participate if called. Thank you for your consideration and interest.

Sincerely,

[scanned signature]

Ruth B. Mandel
Director
Board of Governors Professor of Politics

APPENDIX C:

ANNOTATED QUESTIONNAIRE

PROVISIONAL VOTING SURVEY

Sample: Local Elections Officials
National sample: 400 telephone interviews

Draft Version: July 19, 2005

Initial Screener

Hello, my name is _____ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. May I please speak to [INSERT NAME FROM SAMPLE]?

[IF UNSURE WHO THIS INDIVIDUAL IS – ASK:]

May I please speak to the individual who was responsible for overseeing voting procedures for the 2004 election at the county, borough, municipality, or parish level such as the Registrar of Elections, County Clerk, Commissioner of Elections, Director of Elections, Administrator of Elections, or Clerk of Court?

[SKIP TO “CONSENT OF INDIVIDUAL DIFFERENT FROM SAMPLE CONTACT”]

Consent

Hello, my name is _____ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. We recently sent you a letter requesting your participation in the confidential survey we are conducting with elections officials. Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money.

The information you will be sharing today will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006. This information will be maintained at a secure site and your name will not be identified in the report. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

Consent of Individual Different from Sample Contact

Hello, my name is _____ and I'm calling on behalf of the Eagleton Institute of Politics at Rutgers University. Rutgers University is conducting a study on provisional voting based on experiences from the 2004 election. We recently sent a letter to your office requesting participation in a confidential survey we are conducting with elections officials. Your participation in the survey will assure that we understand the views of election officials who have direct experience with provisional voting. We would very much like to include your opinions and would really appreciate it if you could assist us by providing as much information as you can to the best of your knowledge. You were randomly selected for the survey from a nationally representative list of election officials. We are not selling anything, and not asking for money.

The information you will be sharing today will be the basis for recommendations to the U. S. Election Assistance Commission (EAC) to consider in the development of its guidance to the states in 2006. This information will be maintained at a secure site and your name will not be identified in the report. All your answers are completely confidential.

The survey should take no more than 10 or 15 minutes to complete.

IF NECESSARY: If you should have any questions about the study, you may contact the Research Project Coordinator, April Rapp, at the Eagleton Center for Public Interest Polling at 732-932-9384 ext. 261.

IF RESPONDENT DECLINES TO PARTICIPATE, ADDITIONAL PRODDING NEEDED:

-Your participation is very important because only 400 election officials have been randomly selected for this survey and your views will be used to provide provisional voting policy recommendations. We would be happy to fax you a letter outlining the study objectives. [If yes, can I please have your fax number?] (RECORD FAX NUMBER)

Screener

1. On Election Day, November 2nd, 2004 was it your responsibility to supervise the election at the county, borough, municipality, or parish level?

(n=400)

100%	YES	GO TO Q2
--	NO	GO TO Q1a
--	DON'T KNOW	TERMINATE
--	REFUSED	TERMINATE

- 1a. May I please have the name and phone number of the individual who was responsible for supervising the 2004 election at the county, borough, municipality, or parish level?

[RECORD NAME/PHONE NUMBER OF REFERRAL] (THANK AND TERMINATE)

Jurisdiction

2. What was your job title on Election Day, November 2nd, 2004?

(DO NOT READ – VOLUNTEER RESPONSE)

(n=400)

10%	Administrator of Elections
3	Chairman of Elections
2	Clerk of Court
7	Commissioner of Elections
17	County Clerk
16	Director of Elections
8	Registrar of Elections
3	Secretary of Elections
7	Supervisor of Elections
4	Town Clerk
25	Other (specify)
--	Don't Know
--	Refused

023415

General: Provisional Voting

Now, I would like to ask you some questions about provisional voting in your jurisdiction.

3. What is your best estimate of the total number of provisional ballots cast in the 2004 election in your jurisdiction, whether they were ultimately counted or not? Your best estimate is fine.

(n=400)

48%	Less than 100
21	Between 100 to just under 500
9	Between 500 to just under 1000
14	1000 or more
8	None/Zero
1	Don't Know
--	Refused

(GO TO Q7)

(ASK ONLY IF Q3=1-4)

4. In your opinion, how many of these provisional ballots were counted – a lot, some, very few, or none at all?

(n=400)

40%	A lot
24	Some
25	Very few
10	None at all
1	Don't Know
--	Refused

5. In your opinion, which one of the following, if any, created the most need for the use of provisional ballots in your jurisdiction on Election Day, 2004?

(READ AND ROTATE 1-4)

(n=369)

71%	Individual's name not listed on the voter registration rolls
6	<u>First time</u> voters couldn't provide the proper identification
8	Voter's eligibility challenged
5	Registered voters could not provide the proper identification
9	Other (specify)
2	Don't Know
--	Refused

6. In your opinion, which one of the following, if any, was the most important reason that provisional ballots cast in your jurisdiction were not validated and ultimately not counted in the 2004 Election?

(READ AND ROTATE 1-4)

(n=369)

3%	Individual failed to provide the identification required to validate the provisional ballot
--	Signature on the provisional ballot did not match the signature on the registration form
13	Provisional ballot cast in the incorrect voting precinct
76	Individual was not registered
3	All provisional ballots were validated and counted in 2004 election
4	Other (specify)
1	Don't Know
--	Refused

Pre-Election Experience: Instructions and Information Received (Content and Quality)

7. Were provisional voting instructions provided by the state government for the 2004 Election?

(n=400)

84%	Yes	(GO TO Q8)
16	No	(GO TO Q14)
1	Don't Know	(GO TO Q14)
--	Refused	

STATE GOVERNMENT INSTRUCTIONS AND INFORMATION

(ASK ONLY IF Q7=1)

8. Which of the following provisional voting instructions, if any, did you receive from the state government?

(ACCEPT MULTIPLE RESPONSES; ROTATE LIST)

(n=335)

	<u>Yes</u>	<u>No</u>
How to administer the provisional voting system	90%	10%
Who is eligible to vote using a provisional ballot	93	8
How individuals vote using a provisional ballot	87	13
The jurisdiction where individuals can vote by provisional ballot	79	21
Whether the provisional ballot could be used as an application to update the voter's registration	66	34
How to train poll workers to process provisional ballots	88	12
How to provide voters with the opportunity to verify if their provisional ballot was counted	91	9
Guidelines for determining which provisional ballots are to be counted	91	9
Strategies to reduce the need for voters to use provisional ballots	54	46
How to design the structure of the provisional ballot	64	37
Other (specify)	--	--
All of the above	7	93
None of the above	--	--
Don't know	2	99
Refused	--	--

(ASK ONLY IF Q8=4)

9. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on the jurisdiction where individuals can vote by provisional ballot -- very useful, somewhat useful, not very useful, or not useful at all?

(n=265)

73%	Very useful
23	Somewhat useful
2	Not very useful
--	Not useful at all
2	Don't know
--	Refused

(ASK ONLY IF Q8=7)

10. You said that you received provisional voting instructions from the state government. Please tell me how useful the instructions were on how to provide voters with the opportunity to verify if their provisional ballot was counted -- very useful, somewhat useful, not very useful, or not useful at all?

(n=304)

77%	Very useful
20	Somewhat useful
1	Not very useful
--	Not useful at all
2	Don't know
--	Refused