

**(ASK ONLY IF Q8=8)**

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?

(n=304)

80%	Very useful
16	Somewhat useful
2	Not very useful
1	Not useful at all
1	Don't know
--	Refused

**(ASK ONLY IF Q8=9)**

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?

(n=182)

60%	Very useful
31	Somewhat useful
5	Not very useful
2	Not useful at all
2	Don't know
--	Refused

**(ASK ONLY IF Q8=1-10)**

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?

(n=330)

76%	Very useful
22	Somewhat useful
1	Not very useful
--	Not useful at all
1	Don't know
--	Refused

023420

<b>Implementation of Instructions and Distribution of Information to Election Employees</b>
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Now I'm going to ask you some questions about poll worker training.

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?

**(ACCEPT MULTIPLE RESPONSES; READ EACH ITEM; AND ROTATE LIST)**

(n=400)

	<u>Yes</u>	<u>No</u>
Access to a list of eligible voters in the jurisdiction	81%	20%
Telephone line for poll workers to speak immediately to an election official with access to the list of eligible voters in the jurisdiction	91	9
Maps of adjacent precincts for poll workers to help voters locate their resident and corresponding polling place	60	40
Additional staff such as "greeters" at polling places to direct voters to the correct polling location	44	56
Statewide voter registration database available at polling places	12	89
Other (specify)	--	--
None of the above	2	99
Don't know	--	--
Refused	--	--

When implementing provisional voting in your jurisdiction, please tell me how successfully you think the following activities were performed:

**(READ AND ROTATE Q15-Q21)**

[PROBE: Would you say that activity was performed very successfully, somewhat successfully, not very successfully, or not successfully at all?

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

(n=400)

69%	Very successfully
27	Somewhat successfully
1	Not very successfully
1	Not successfully at all
3	Didn't perform this activity
1	Don't Know
--	Refused

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

(n=400)

71%	Very successfully
22	Somewhat successfully
1	Not very successfully
1	Not successfully at all
4	Didn't perform this activity
1	Don't Know
--	Refused

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

(n=400)

68%	Very successfully
27	Somewhat successfully
1	Not very successfully
--	Not successfully at all
3	Didn't perform this activity
1	Don't Know
--	Refused

023422

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

(n=400)

65%	Very successfully
18	Somewhat successfully
1	Not very successfully
--	Not successfully at all
14	Didn't perform this activity
1	Don't Know
1	Refused

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

(n=400)

66%	Very successfully
17	Somewhat successfully
1	Not very successfully
1	Not successfully at all
14	Didn't perform this activity
1	Don't Know
--	Refused

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

(n=400)

70%	Very successfully
22	Somewhat successfully
2	Not very successfully
1	Not successfully at all
5	Didn't perform this activity
1	Don't Know
--	Refused

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

(n=400)

64%	Very successfully
26	Somewhat successfully
2	Not very successfully
--	Not successfully at all
7	Didn't perform this activity
2	Don't Know
--	Refused

**Post-Election Experience: Counting Ballots**

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)**

(n=400)

	<u>Yes</u>	<u>No</u>
Notification by mail	47%	54%
Dedicated Toll-Free Telephone Hotline	39	62
Email notification	10	90
Website confirmation	22	78
Main telephone number for the local or county election office	70	30
All of the above	--	--
None of the above	4	96
Other (specify)	1	99
Don't Know	--	--
Refused	--	--

**(ASK Q23-Q25 ONLY IF Q3=1-4)**

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

(n=369)

63%	Very confident
30	Somewhat confident
4	Not very confident
1	Not at all confident
2	Don't Know
--	Refused

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

(n=369)

75%	Very confident
20	Somewhat confident
2	Not very confident
--	Not at all confident
3	Don't Know
1	Refused

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

(n=369)

95%	Very confident
3	Somewhat confident
--	Not very confident
--	Not at all confident
1	Don't Know
--	Refused

## General Perceptions

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)

(n=400)

40%	Training of poll workers
13	Length of time provided before the election to implement the provisional voting process
7	Clarity of instruction received from your State Government
12	Having enough staff at the polling place
4	Other (specify)
2	All of the above
21	None of the above
2	Don't Know
--	Refused

Please tell me how much you agree or disagree with the following statements about Provisional voting in your jurisdiction for the 2004 Election.

(READ AND ROTATE Q27 –Q35)

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

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

(n=400)

18%	Agree strongly
25	Agree somewhat
6	Neither agree nor disagree
22	Disagree somewhat
29	Disagree strongly
1	Don't Know
--	Refused

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

(n=400)

24%	Agree strongly
18	Agree somewhat
11	Neither agree nor disagree
22	Disagree somewhat
24	Disagree strongly
1	Don't Know
--	Refused

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

(n=400)

16%	Agree strongly
17	Agree somewhat
8	Neither agree nor disagree
22	Disagree somewhat
33	Disagree strongly
3	Don't Know
--	Refused

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

(n=400)

8%	Agree strongly
18	Agree somewhat
6	Neither agree nor disagree
26	Disagree somewhat
39	Disagree strongly
3	Don't Know
--	Refused

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

(n=400)

16%	Agree strongly
17	Agree somewhat
6	Neither agree nor disagree
27	Disagree somewhat
33	Disagree strongly
1	Don't Know
--	Refused

32. The provisional voting system was easy to implement.

(n=400)

33%	Agree strongly
32	Agree somewhat
6	Neither agree nor disagree
15	Disagree somewhat
14	Disagree strongly
--	Don't Know
--	Refused

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

(n=400)

40%	Agree strongly
27	Agree somewhat
8	Neither agree nor disagree
9	Disagree somewhat
15	Disagree strongly
1	Don't Know
--	Refused

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

(n=400)

70%	Agree strongly
22	Agree somewhat
3	Neither agree nor disagree
3	Disagree somewhat
2	Disagree strongly
1	Don't Know
--	Refused

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

(n=400)

57%	Agree strongly
29	Agree somewhat
5	Neither agree nor disagree
6	Disagree somewhat
3	Disagree strongly
--	Don't Know
--	Refused

### Recommendations for the Future

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)**

(n=400)

29%	More funding for poll worker training
18	More time for poll worker training
19	Clearer instruction from the Federal Government
12	Clearer instruction from the State Government
5	Other: specify
2	All of the above
14	None of the above
2	No changes needed
1	Don't Know
--	Refused

In general, please tell me how much you agree or disagree with the following statements about provisional voting.

**(READ AND ROTATE Q37-Q44)**

[IF AGREE OR DISAGREE, ASK:] Would you say you agree/disagree strongly or agree/disagree somewhat?

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

(n=400)

34%	Agree strongly
19	Agree somewhat
7	Neither agree nor disagree
20	Disagree somewhat
20	Disagree strongly
2	Don't Know
--	Refused

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.

(n=400)

45%	Agree strongly
25	Agree somewhat
6	Neither agree nor disagree
9	Disagree somewhat
15	Disagree strongly
2	Don't Know
--	Refused

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

(n=400)

25%	Agree strongly
23	Agree somewhat
5	Neither agree nor disagree
18	Disagree somewhat
30	Disagree strongly
1	Don't Know
--	Refused

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

(n=400)

27%	Agree strongly
24	Agree somewhat
8	Neither agree nor disagree
16	Disagree somewhat
24	Disagree strongly
2	Don't Know
--	Refused

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

(n=400)

31%	Agree strongly
21	Agree somewhat
5	Neither agree nor disagree
19	Disagree somewhat
24	Disagree strongly
1	Don't Know
--	Refused

023431

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

(n=400)

28%	Agree strongly
16	Agree somewhat
6	Neither agree nor disagree
20	Disagree somewhat
29	Disagree strongly
2	Don't Know
--	Refused

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

(n=400)

44%	Agree strongly
28	Agree somewhat
4	Neither agree nor disagree
8	Disagree somewhat
17	Disagree strongly
1	Don't Know
--	Refused

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

(n=400)

59%	Agree strongly
30	Agree somewhat
5	Neither agree nor disagree
3	Disagree somewhat
4	Disagree strongly
1	Don't Know
--	Refused

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)**

(n=400)

20%	In-precinct provisional voting only
40	Provisional voting from a central location rather than in individual polling places
19	In-jurisdiction provisional voting only
2	Other (specify)
1	All of the above
12	None of the above
7	Don't Know
--	Refused

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)**

(n=400)

26%	Having a statewide voter registration database available at polling places
6	Providing additional staff such as “greeters” at polling places to direct voters to the correct polling location
28	Providing a state sponsored website to enable individuals to check registration status online before going to the polling place
5	Providing poll workers access to an updated printed list of eligible voters in the jurisdiction
16	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
1	Other (specify)
4	All of the above
13	None of the above
2	Don’t Know
--	Refused

**Demographics (ASK ALL)**

I only have a few more questions for statistical purposes....

D1. As election official were you hired, appointed, promoted, or elected to the position?

(n=400)

14%	Hired
42	Appointed
2	Promoted
42	Elected
1	Other/Specify
--	Don't know
--	Refused

023435

D2. For how many years have you served as the election official? [CODE IN WHOLE NUMBERS – IF LESS THAN 1 YEAR RECORD AS “LESS THAN ONE YEAR”]

(n=400)

LESS THAN 1 YEAR	1%
1	4
2	7
3	5
4	5
5	7
6	4
7	5
8	3
9	3
10	7
11	2
12	5
13	3
14	5
15	7
16	4
17	1
18	4
19	2
20	3
21	1
22	2
23	2
24	1
25	1
26	1
27	2
28	2
29	1
30	1
31	--
32	--
33	1
34	1
35	1
36	--
38	--
43	--

D3. Interviewer please record gender.

71%	Female
29	Male

*That completes our survey. Thank you very much for your time and cooperation.*

**APPENDIX D:**  
**VERBATIM RESPONSES**

\*\*\*\*\*VERBATIM EAGLETON NATIONAL SURVEY OF LOCAL ELECTIONS OFFICIALS\*\*\*\*\*

2. What was your job title on Election Day, November 2<sup>nd</sup>, 2004?

Q2 ACCESSOR/RECORDER/COUNTY CLERK\REGISTRAR OF VOTERS  
Q2 ADMISTRATIVE ASSISTANT SUPERVISOR ELECTIONS  
Q2 ASSISTANT ADMIN  
Q2 ASSISTANT EXECUTIVE DIRECTOR OF ELECTION COMMISSION  
Q2 ASSISTANT REGISTRAR  
Q2 asst rgiter of voters  
Q2 Asst. Registrar of Elections  
Q2 auditor  
Q2 auditor  
Q2 chairwoman  
Q2 chief clerk  
Q2 Chief Elections Officer  
Q2 clerk of county commisions  
Q2 Clerk of Elections  
Q2 CO-MANAGER  
Q2 COLLECTOR |  
Q2 county auditor  
Q2 county auditor  
Q2 county clerk election authority  
Q2 COUNTY COMM CLERK  
Q2 county election officer  
Q2 COUNTY ELECTION OFFICER  
Q2 county of registrar  
Q2 democrat comissioner  
Q2 DEPUPTY COMISSIONER  
Q2 DEPUTY CLERK IN CHARGE OF ELECTIONS  
Q2 DEPUTY CLERK SUPERVISOR  
Q2 DEPUTY ELECTION OFFICER  
Q2 DEPUTY ELECTIONS COMMISSIONER  
Q2 Deputy General Register  
Q2 dir of voter registration and elections  
Q2 DIRECTION COMISSIONER  
Q2 electioni supt.  
Q2 ELECTION BOARD ADMIN

Q2 election board secretary  
 Q2 election deputy  
 Q2 ELECTION DIVISIONS MGR  
 Q2 election officer  
 Q2 ELECTION OFFICER  
 Q2 election official  
 Q2 ELECTION SUPER  
 Q2 election superintendant  
 Q2 election superintendent  
 Q2 ELECTION SUPERINTENDENT  
 Q2 election superitendent  
 Q2 Elections Admin  
 Q2 elections administrater  
 Q2 ELECTIONS SUP  
 Q2 EXEC DIRECTOR BOARD OF ELECTIONS  
 Q2 FULTON COUNTY CLERK AND RECORDER  
 Q2 General REegistar  
 Q2 general registrar  
 Q2 GENERAL REGISTRAR  
 Q2 IN CHARGE OF PROVISIONAL BALANCE  
 Q2 judge  
 Q2 Local Election Official  
 Q2 overseeres  
 Q2 Rebgistrar  
 Q2 Region 2 Election Supervisor  
 Q2 regisrtar of voters  
 Q2 registrar of voter  
 Q2 registra of voters  
 Q2 registrar of voters  
 Q2 Registrar of Voters  
 Q2 REGISTRAR OF VOTERS  
 Q2 Republican election commishioner  
 Q2 Republican Elections Commisioner  
 Q2 Republican Registrar of Voters  
 Q2 SEC OF TULSA COUNTY ELECTION BOARD  
 Q2 senior clerk register assistant  
 Q2 sherriff  
 Q2 SPECIALIST /ELECTIONS COORDINATOR  
 Q2 SUPERINTENDENT  
 Q2 SUPERINTENDENT OF ELECTIONS  
 Q2 supt, of elections  
 Q2 voter of registrar  
 Q2 voter register  
 Q2 VOTER REGISTRATION ADMINISTRATOR

023439

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?

Q5 a lot of ppl have moved from one town to another and they weren't registered  
Q5 ADDRESS CHANGES  
Q5 change of address  
Q5 college students (ellab) registered voters couldnt get home to vote!!  
Q5 fail to change the address  
Q5 FAILED TO REPORT ADDRESS CHANGE SO IN WRONG PRECINCT  
Q5 inspector error  
Q5 MOST HAD MOVED OUT OF A DIFERENT JURISDICTION  
Q5 moved and no address change  
Q5 MOVING FROM ONE PRECINCT TO ANOTHER  
Q5 not registered  
Q5 NOT REGISTERED IN PROPPER PLACE - ADDRESS CHANGES  
Q5 NOT REGISTERED WITHIN 5 YEARS  
Q5 OUT OF PRECINCT  
Q5 they have moved within the county  
Q5 they sd they didn't get their ballot and some were military  
Q5 Unreported Move - their name does not show on their new address' voting precinct  
Q5 voter fail to update their registration  
Q5 Voter going to wrong polling place  
Q5 VOTER WENT TO INCORECT POLLING PLACE  
Q5 voters moved  
Q5 VOTERS MOVED  
Q5 VOTERS MOVING FROM ONE COUNTY TO ANOTHER OR WITHIN THE COUNTY AND  
NOT UPDATING THEIR REGISTRATION  
Q5 voters not registered  
Q5 voters showed up to wrong precinct  
Q5 voters voting in the wrong precinct  
Q5 voters were at wrong precinct  
Q5 wrong precient

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?

- Q6 b/c they were not voters..
- Q6 Combination of not being registered, also individual voted incorrect precinct (else)no
- Q6 Individual registered in wrong county
- Q6 individual was not registered in the right state
- Q6 judge did not put provisional envelopes in ballot box
- Q6 MEDIA DID NOT UNDERSTAND WHAT PROVISIONAL VOTING
- Q6 NO SIGNATURE AT ALL
- Q6 none
- Q6 pirch for 10 year skip and voting
- Q6 POLL WORKER DID NOT COMPLETE FORM CORRECTLY(ELSE)NO
- Q6 There was confusion due to the newness of the provisional ballot procedure
- Q6 THEY WERE IN THE WRONG COUNTY COLLEGE STUDENTS REGISTERED IN OTHER COUNTRIES
- Q6 were not completed properly\

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?

Q14 NO POLL WORKERS IN OREGON

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

Q22 THERE WAS ONLY ONE AND HE WAS INFORMED IN PERSON

Q22 voters were given written documents informing them on how to inquire about their votes

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)

- Q26
- Q26 access to the voters after the election
- Q26 age of the poll workers
- Q26 getting the poll workers to understand what I was explaining. Implementing the provisional ballot and the purpose of a provisional ballot was the biggest challenge in getting the poll workers to understand what this meant.
- Q26 having enoug ballots
- Q26 having the voter get and understand the information
- Q26 lack of awareness of voter's opportunity for provisional voting
- Q26 MISREPRESENTATION OF PROVISIONSL BALLOTING WAS THE KEY PROBLEM
- Q26 NOT ENOUGH TIME TO VALIDATE THE BALLOT AFTER ELECTION OFFICE
- Q26 people saying go anywhere and get a provisional ballot.. it was falsified information given through newspapers and political parties
- Q26 POLL WORKERS MISUNDERSTOOD WHAT PROVISIONAL BALLOTS WERE FOR / PUBLIC EDUCATION
- Q26 state worker getting back to us
- Q26 the staff, not enough
- Q26 to verify that they were a valid provisional voter after the election the research was quite involved and time consuming
- Q26 verification

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.

- Q36      accessibility for the voters
- Q36      **CHANGES IN STATE LAW**
- Q36      clearer instructions from both state and federal on who can vote provisional ballots
- Q36      clearer instruction to the voter
- Q36      Elimination of provisional voting should be dumped
- Q36      **ELIMINATE IT**
- Q36      **MAKING THE FEDERAL AND STATE GOVERNMENTS TO AGREE ON WHO SHOULD AND WHERE THEY CAST PROVISIONAL BALLOTS**
- Q36      more correct information from the media
- Q36      **MORE EDUCATION FOR VOTERS...GENERAL INFO EDUCATION**  
more funding in every aspect in provisional voting, it has become very costly and time consuming (else) if the polls have to close for any reason, anyone who has not voted has to use a provisional vote, it is very costly, at 40
- Q36      more simpler
- Q36      more technical work force (ellab) if we could provide a laptop.. we did not have this, we need help in recruiting... what I would like to see is vote centers for provisional ballots..
- Q36      **NOT ENOUGH TIME TO VALIDATE VOTE AFTER THE ELECTION**
- Q36      **PUBLIC EDUCATION ON PROVISIONAL VOTING**
- Q36      **REGISTRATION OF THE VOTERS, AND THE VOTERS BEING MORE AWARE OF THE VOTING PROCESS**  
they need to look at the whole system... the system does not allow enough time from the time the provisional ballots are cast and the time they are actually counted is 3 days... therefore we dont have enough time to inquire more
- Q36      **VOTER AND PUBLIC EDUCATION - VOTER NEEDS TO KNOW WHAT A PROVISIONAL BALLOT IS**
- Q36      voters need to be trained
- Q36      **VOTERS SHOULD EDUCATE THEMSELVES BETTER. THE INFORMATION IS AVAILABLE TO THEM.**

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?

Q45 DON'T WANT TO INCREASE

Q45 how to correct provisional to educate the public.

Q45 INCREASE PROVISIONAL VOTING IN REGULAR VOTING PLACES (ELSE)NO

Q45 NOT ENOUGH TIME FOR VALIDATION AFTER ELECTION

Q45 they need to have provisional voting in BOTH a central location and in-precinct location as well

Q45 UPDATE REGISTRATION BEFORE DEADLINE

Q45 VOTERS TAKE RESPONSIBILITY FOR REGISTRATION

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?

Q46 advanced voting

Q46 VOTERS UPDATE REGISTRATION

D1. As election official were you hired, appointed, promoted, or elected to the position?

D1 elected then turned out to be appointed

D1 I WAS ELECTED AS A PROBATE JUDGE PART OF THAT JOB IS SUPERVISING ELECTIONS

D1 INHERITTED

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

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Revised materials for Sept. 6 Meeting

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:39 AM —



"Tom O'Neill"  
[Redacted]  
09/03/2005 02:46 PM

To [Redacted]  
cc  
Subject Revised materials for Sept. 6 Meeting

Karen,

The hard copy of the materials you received on Friday may have been missing the response to Question 4 (the copy I received did not include it). Several other typographical and other errors also became apparent when I reviewed it today. .

Attached is a revised version of the package that corrects those errors. Please rely on this version to prepare for the meeting on Tuesday. I will bring sufficient copies to hand out before the meeting.

Sorry for the errors.

Tom O'Neill



EAC BRIEFING0906.doc

023449



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EAGLETON INSTITUTE OF POLITICS

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**BRIEFING FOR THE EAC**

**PRELIMINARY FINDINGS  
ON PROVISIONAL VOTING**

with

**Summary responses to 6 Key Questions**

September 6, 2005

Prepared by:  
Eagleton Institute of Politics at Rutgers, The State University of New Jersey  
Moritz College of Law at the Ohio State University

023450

## MEMORANDUM

TO: Commissioners and Staff of the EAC  
FROM: Tom O'Neill, Eagleton Institute of Politics  
DATE: September 3, 2005  
RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

- 1) How did states prepare for the HAVA Provisional Voting requirement?
- 2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
- 3) How did litigation affect the implementation of Provisional Voting?
- 4) How effective was Provisional Voting in enfranchising qualified voters?
- 5) Did states 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?

Our discussion on the 6<sup>th</sup> will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction --a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:

- a) Statistical Review of Provisional Voting in the 2004 Election
- b) State Narratives on Provisional Voting
- c) Memorandum: Provisional Voting Litigation by Issue
- d) Memorandum: Provisional Voting Litigation by State
- e) Memorandum: Provisional Voting Litigation

023451

## **Question 1: How did states prepare for HAVA's provisional voting requirements?**

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, Election Day and post-Election Day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process, including training poll workers. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all of those officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot, and they felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot had been counted as well as instruction establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of those local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the jurisdiction.
- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter

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registration database.

- Almost equally rare (14%) were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement to provide voters a way to find out if their provisional ballots had been counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

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**Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**

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In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of “fail-safe voting.” Local election officials in the “old” states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the “old” states found implementing the provisional voting system was “easy,” but that was true of just over half (56%) of officials in the “new” states.
- About half (49%) of officials in the “new” states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the “old” states felt that way.
- Nine out of ten local officials in the “old” states felt that the support received from state government was adequate, compared to 8 in 10 in the “new” states.

In some functions there was little difference in the preparation for provisional voting by “old” and “new” states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about “strategies to reduce the need for voters to use provisional ballots.” But for other functions, training varied widely in both type and amount between the two subgroups:

- More officials in “old” states (7 in 10) than “new” (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more “old” state officials received instruction about using the provisional ballot as an application to update the voter’s registration.

The “new” state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the “new” states, compared with 3 out of 10 in the “old” stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the “new” states felt that more time was needed compared with just over a quarter (26%) of those in “old” states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the “old” states, provisional ballots represented over 2% (2.11%) of the total vote. In the “new” states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between “old” and “New.” In ruling ballots legitimate and including them in the final vote, the “old” states averaged nearly double the number of the “new” states, 58% to 32%. In “old” states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the “new” states.

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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**SUMMARY:** Litigation just before the 2004 election upheld the principle that provisional ballots are 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. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to shape significantly the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process. The nation can anticipate more litigation before the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

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.

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. (It just so happened that a state’s decision not to count wrong-precinct provisional ballots was not a HAVA violation). Second and significantly, the litigation clarified the right of voters to receive provisional ballots, even though 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 in the wrong precinct, they would be on notice that it would be a symbolic gesture only. Third, and relatedly, 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.

To a lesser extent 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 whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are 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.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the “placeholder” filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state’s highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot’s envelope was missing information as a result of a poll worker’s clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican’s margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state’s legislature took matters into its own hands. The race for the state’s Superintendent of Public Instruction turned on whether approximately 11,000 “wrong precinct” provisional ballots would be counted under state law. The state’s Supreme Court ruled that they

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should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – 43 weeks after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County had been rejected because they could not be matched with a signature in the county's current electronic database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

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The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

#### CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a “preferred practice” for states to preclude any post-election challenges that could have been filed in a pre-election lawsuit.

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will

need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

#### Question 4: How effective was provisional voting in enfranchising qualified voters?

Answering this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but it may provide data good enough for at least a rough assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

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

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. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)\*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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\* Another interpretation of the data should be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each election asks people if they were registered and if they voted. It 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. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%.

Several states came to just that conclusion. Legislative activity is evidence that states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to 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.
- 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.

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions, and those are described in the answer to Question 3.

Aggregate data from the states indicates that some states were more effective than others in enfranchising voters through the provisional ballot. In states that used a provisional ballot before HAVA ("old" states), a higher proportion of voters were enfranchised by provisional ballots than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to 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.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is room for improvement.

If experience with provisional voting does turn out to be the 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 guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

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. The other possibility is that the "new" states have a political culture different from the "old" states. That is, underlying characteristics of the "new" states political system may be the reason they had not adopted some form of provisional voting as the "old" states did.

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, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some 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 ballot will be harder and take longer to achieve.

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## **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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HAVA gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted. Little consistency existed among and within states in the way provisional ballots were used in 2004.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots was counted than in "new" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to 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.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33%, of cast provisional ballots.
- 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.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
- 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.

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- 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 certified
  - In the 14 states that required an affidavit 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.
  - 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 (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.
- Voter registration databases provided information that reduced the number of provisional ballots counted. 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%).
  - States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.
    - In experienced states, this was even more pronounced. 52% of 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 280,000 more voters would have been enfranchised across the country.

**High-Low rating of Percent of PV Ballots Cast as part of Turnout**

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		Total
		Less than 50% Counted	More than 50% Counted	
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17*
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots

\* These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's  $Q = 0.97$ ), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters cast a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because there were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

#### Variation within states

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found 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.

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently 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.

#### Election Official's Perceptions

In addition to the statistical differences among states' handling of provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. The survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether

they came from “old” or “new” States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from “new” states reported receiving more guidance on how to evaluate ballots once cast, while officials from “old” states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from “old” states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from “new” states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from “old” states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from “new” states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. Eight out of ten officials from experienced states reported that “there is a need to offer voters the opportunity to cast provisional ballots”, while only 6 out of 10 from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

### Conclusion

States that previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

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If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflect different political cultures among the states, consistency among the states will prove more difficult to achieve.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country. But as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA's requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

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## **Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

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This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be “useful” or “very useful,” the crucial question is how well did the process work on Election Day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter’s registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology –

such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were “useful,” the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:40 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc

Subject Fw: EAC Briefing Materials - Tues. 9/6

Karen Lynn-Dyson  
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— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:34 AM ----



"Lauren Vincelli"

[Redacted]

09/01/2005 06:20 PM

Please respond to

[Redacted]

To [Redacted]

cc "Tom O'neill" [Redacted]

Subject EAC Briefing Materials - Tues. 9/6

Hi Karen,

Attached please find a summary of answers to the questions guiding our Provisional Voting analysis in preparation for our meeting with the EAC on Tuesday, Sept. 9<sup>th</sup>. Please distribute this document in advance of the briefing to your colleagues who will be attending. There are several appendix documents that have been fedex'ed to you for delivery by tomorrow at noon. These documents form a large part of our original research, and are referred to in our summary responses to the 6 guiding questions. I am sending 3 copies of the appendix documents for you and your colleagues. Additionally, Mr. O'Neill will be bringing you a CD-rom with all of the enclosure documents for your convenience.

If you have any questions, please do not hesitate to call or email me. Enjoy the holiday weekend.

Best,  
Lauren Vincelli

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EAGLETON INSTITUTE OF POLITICS

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**BREIFING FOR THE EAC**

**PRELIMINARY FINDINGS**  
**ON PROVISIONAL VOTING**

September 1, 2005

Prepared by:  
Eagleton Institute of Politics at Rutgers, The State University of New Jersey  
Moritz College of Law at the Ohio State University

023471

## MEMORANDUM

TO: Commissioners and Staff of the EAC

FROM: Tom O'Neill, Eagleton Institute of Politics

DATE: September 6, 2005

RE: Briefing on Provisional Voting Research

The enclosed draft synthesizes our findings to date based on the research on provisional voting completed since the start of the project. It is organized as summary answers to the six key questions on topics of particular interest enumerated in the contract.

- 1) How did states prepare for the HAVA Provisional Voting requirement?
- 2) How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
- 3) How did litigation affect the implementation of Provisional Voting?
- 4) How effective was Provisional Voting in enfranchising qualified voters?
- 5) Did states 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?

Our discussion on the 6<sup>th</sup> will revolve around these draft, summary answers. Your comments and reactions to the material will provide direction a basis for us to complete work on the final report and the preliminary guidance document. We seek the EAC's response and comments to ensure that the research is meeting the needs of Commissioners and staff.

We will also ask for the comments of the Peer Review Group on this draft to provide independent analysis of our approach and methods.

The following materials are enclosed as background for the presentation:

Summary responses to 6 Key Questions regarding Provisional Voting

Appendices:

- a) Statistical Review of Provisional Voting in the 2004 Election
- b) State Narratives on Provisional Voting
- c) Memorandum: Provisional Voting Litigation by Issue
- d) Memorandum: Provisional Voting Litigation by State
- e) Memorandum: Provisional Voting Litigation

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## **Question 1: How did states prepare for HAVA provisional voting requirements?**

HAVA required all states to develop a process for permitting individuals who state they are registered, eligible to vote and in the proper jurisdiction for voting but are not on the official registration list to do so by provisional ballot. It also directed states to provide a way for provisional voters to find out if their ballots were counted.

For the 25 states that had some form of provisional ballots before HAVA, meeting the requirements meant reviewing and revising, if necessary, their process for provisional voting. The 18 states that were new to provisional voting had to provide for provisional ballots by a new statute or administrative regulation and had to design procedures for pre-election, election day and post-election day activity. Preparation at the state level is described exhaustively in the collection of state statutes and regulations compiled in this research.

In addition to devising the provisional voting process, states had the responsibility to define "jurisdiction," adopt rules regarding the use of voter identification, and prepare a system to decide which provisional ballots cast should be counted. The states also had the responsibility of providing training or instruction for local election officials who would actually manage the provisional voting process and the local and intermediary level of government. Interviews with local election officials, at the county level in most states, provided information to assess how they prepared to administer the process.

Most, but not all, (84 percent) county-level election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states:

- Almost all officials received instruction from their state government on how to determine a voter's eligibility to receive a provisional ballot and felt the instructions provided were useful.
- Nine out of ten received instruction for providing voters the opportunity to verify if the provisional ballot was counted as well as instruction for establishing guidelines for counting provisional ballots.
- Two out of three received information on using a provisional ballot as an application to update the voter's registration.
- Only about half of local election officials received instruction on strategies to reduce the need for voters to use provisional ballots.

Although almost all county-level election officials provided training or written instruction to precinct-level poll workers on how to administer provisional ballots, wide disparities existed in other areas of instructions or resources.

- Nine out of ten provided a telephone line for poll workers to speak to an election official with access to a list of eligible voters to determine voters' assigned precinct and polling place.
- Eight in ten furnished local poll workers with access to a list of eligible voters in the

jurisdiction.

- Only about 1 in 10 (12 percent) made available to poll workers a statewide voter registration database.
- Almost equally rare (14%) was training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in how the county-level officials prepared to comply with HAVA's requirement of providing that voters have a way to find out if their provisional ballots counted:

- Seven in ten of those officials provided the main telephone number for the local or county election office;
- About half (47 percent) used mail notification;
- Four in ten provided a dedicated toll-free telephone hotline;
- About 1 in 5 (22%) offered this information through a website, and about half that number offered email notification.

**Question 2: How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**

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In the 2004 election, 18 states were new to the process of provisional voting, while 25 others had experience with similar methods of “fail-safe voting.” Local election officials in the “Old” states felt more confident in their ability to administer the provisional voting process:

- Almost three-quarters (74%) of local election officials in the “Old” states found implementing the provisional voting system was “easy,” but that was true of just over half (56%) of officials in the “New” states.
- About half (49%) of officials in the “New” states felt that more training was needed on how to administer the provisional voting system. Less than 40% of officials in the “Old” states felt that way.
- Nine out of ten local officials in the “Old” states felt that the support received from state government was adequate, compared to 8 in 10 in the “New” states.

In some functions there was little difference in the preparation for provisional voting by “Old” and “New” states. For example, in both subgroups, about half (54%) of county-level officials received from their state governments little information about “strategies to reduce the need for voters to use provisional ballots.” But for other functions, training varied widely in the type and amount between the two types of states:

- More officials in “Old” states (7 in 10) than “New” (6 in 10) received state instruction on the design of the provisional ballot.
- By a similar margin, more “Old” state officials received instruction about using the provisional ballot as an application to update the voter’s registration.

The “New” state officials believed that voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted, and they felt that more funding was needed to educate voters about their rights to cast a provisional ballot:

- Four out of ten officials in the “New” states, compared with 3 out of 10 in the “Old” stated that more information should have been provided to voters about the jurisdiction in which the ballot had to be cast.
- Also, four out of ten in the “New” states felt that more time was needed compared with just over a quarter (26%) of those in “Old” states.

When we move from preparation to performance, the importance of experience becomes sharply clear. In the “Old” states, provisional ballots represented over 2% (2.11%) of the total vote. In the “New” states, that number was less than one-fourth of that, 0.47%. How the ballots were then evaluated also showed significant differences between “Old” and “New.” In ruling ballots legitimate and including them in the final vote, the “Old” states averaged nearly double the number of the “New” states, 58% to 32%. In “Old” states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the “New” states.

### Question 3: How did litigation affect the implementation of Provisional Voting?

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**SUMMARY:** Litigation just before the 2004 election upheld the principle that provisional ballots are 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. This pre-election litigation also clarified that HAVA does not require states to count provisional votes cast in the wrong precinct. Otherwise, however, this pre-litigation occurred too late to significantly shape the way the states implemented provisional voting.

Lawsuits filed shortly after Election Day, which were designed to alter the outcome of a close election, were uniformly unsuccessful in this goal, although some of them had the ancillary effect of requiring the counting of some provisional ballots that would have been left uncounted. Thus, the experience of the 2004 election shows that litigation can be useful, not to change the outcome of a race, but to enhance the accuracy of the provisional voting process. This kind of accuracy-enhancing litigation is most beneficial the earlier it occurs in the process, and the nation can anticipate more of it in advance of the 2006 and 2008 elections if states leave unaddressed some of the ambiguities and problems that surfaced in the 2004 election.

Although the enactment of HAVA in 2002 and its erratic implementation in the states during the ensuing two years provided ample opportunity for litigation designed to clarify its requirements concerning provisional voting, or otherwise challenge state laws and administrative procedures regarding provisional voting, such litigation did not develop until the eve of the November 2004 general election. By then, it was largely too late for litigation to affect the rules and procedures in place in advance of Election Day.

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.

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. (It just so happened that a state’s decision not to count wrong-precinct provisional ballots was not a HAVA violation). Second and significantly, the litigation clarified the right of voters to receive provisional ballots, even though 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 in the wrong precinct, they

would be on notice that it would be a symbolic gesture only. Third, and relatedly, 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.

To a lesser extent 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 whether these provisional voters already have voted an absentee ballot (in which case one would need to be ruled ineligible, in order to avoid double voting). But these decisions confirm the basic premise that provisional ballots are 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.

After Election Day, there was litigation over provisional ballots in states where the outcome of specific races might turn on whether or not some of the provisional ballots cast were ruled eligible for counting. Moreover, the “placeholder” filing of similar lawsuits in Ohio – in anticipation that provisional ballots might have made a difference in the presidential election in that state – indicates that there would have been more litigation of this type had that race (or others) been closer. Although these placeholder lawsuits fizzled away once it was clear that provisional ballots in Ohio would not affect the result of the presidential election, the litigable issues remain capable of resurrection when they might make a difference in the future. Indeed, the League of Women Voters has already filed a major new lawsuit in Ohio, seeking proactive changes in the provisional voting system in advance of the next election in that state. (This effort to resolve these legal issues well before November 2006 is a salutary one, so that the judiciary does not struggle with complicated, sensitive questions at a frenzied pace, either in the last few weeks before Election Day or the first few weeks immediately after Election Day.)

The efficacy of these post-Election Day lawsuits was mixed. In New York, supporters of a Democratic candidate for a state senate seat prevailed in that state’s highest court on the proposition that provisional ballots cast at the correct polling *site* but at the wrong precinct should be counted. (Many polling sites, particularly in urban locations, serve multiple precincts.) The New York high court, however, rejected the contention that provisional ballots at the wrong polling site must be counted. The court also rejected the proposition that a provisional ballot should count if another (regular) vote already had been cast in the name of the provisional voter (even if the provisional voter purported to offer proof that the other vote had been cast by an imposter). Finally, the court accepted the contention that a provisional ballot should count if the ballot’s envelope was missing information as a result of a poll worker’s clerical error. The upshot of these rulings was that the Democratic candidate reduced the Republican’s margin of victory (from 58 to a mere 18 votes), but did not succeed in overturning the election result.

In North Carolina, post-election litigation over provisional ballots ultimately proved inconsequential as the state's legislature took matters into its own hands. The race for the state's Superintendent of Public Instruction turned on whether approximately 11,000 "wrong precinct" provisional ballots would be counted under state law. The state's Supreme Court ruled that they should not count, but the state's legislature disagreed and enacted a new law to supersede the supreme court's ruling. The election was finally resolved on August 23, 2005 – 43 weeks after Election Day – making it the last settled statewide election from 2004. The length of time it took to resolve this dispute shows the dangers of leaving ambiguous provisions of state law concerning the counting of provisional ballots.

Washington suffered an even more celebrated, if slightly less protracted, dispute over the counting of provisional ballots in statewide race. Here, too, the effort to overturn the result of the race through a lawsuit was unsuccessful. Republicans went to court after their gubernatorial candidate, Dino Rossi, came up 129 votes short in the third (manual) count of the ballots (having come out ahead in the two previous – machine – counts). Among other problems, Republicans were able to show that this third count included 252 provisional ballots cast by individuals who could not be verified as registered voters. But because these provisional ballots had been mingled with regular ballots during the counting process, it no longer could be determined for which candidate these provisional ballots were cast. After a lengthy trial at which the Republicans attempted to show statistically that enough of these ineligible ballots would have been cast for the Democratic candidate to change the result of the election, the trial court rejected such statistical proof as improper under state law, and Rossi decided not to appeal the decision to state's supreme court. The ruling came on June 6, 2005 – 32 weeks after Election Day.

Perhaps Washington's plight was aberrational and uncontrollable: how were election officials supposed to predict – and, more important, how were they supposed to avoid – the problem of poll workers inappropriately feeding provisional ballots through the counting machines as if they were regular ballots? (For future elections, Washington has adopted a series of measure, including color-coding provisional ballots and making sure that their different shape and size prevents them from being read by the machines used to count regular ballots, in an effort to prevent a repeat of this particular problem.) The after-the-fact litigation certainly was unable to put the spilled milk back in the bottle. While the litigation put a spotlight on the failures of the electoral process in Washington in 2004, serving as a catalyst for future reforms, it did nothing to change the outcome of the 2004 election itself, except only to delay the conclusion of the process by more than six months. (The fact that the Democratic candidate, Christine Gregoire, who was certified the winner after the manual recount, was inaugurated as Governor and exercised the powers of the office during those six months evidently affected the willingness of a trial judge to overturn the results of the election.)

One earlier aspect of the litigation over provisional ballots in Washington did prove efficacious – and importantly so. In December 2004, during the recounting process (before certification of Gregoire as winner), it was discovered that 547 provisional ballots in King County has been rejected because they could not be matched with a signature in the county's current electronic

database of registered voters, but that county officials had not attempted to match the signatures against original registration forms, older electronic files, or other available records. Upon this discovery, Democrats went to court arguing that state law required that the provisional ballots be verified against these additional records. The Washington Supreme Court unanimously agreed with this argument, vindicating the principle that provisional ballots are designed to protect voters against clerical errors affecting the accuracy of the state's updated registration list.

The state supreme court, however, rejected the Democrats' additional argument that different rates at which counties invalidated provisional ballots because the signature on the ballot did not match the signature on file was sufficient to establish an Equal Protection violation under the principles of *Bush v. Gore*. The different rates could be explained by factors other than the assumption that county officials were applying different standards when conducting signature matches. Since the counties were purporting to apply the same standard, and there was no definitive proof to the contrary, the court found no Equal Protection violation.

The Democrats did win another important procedural ruling early on in the post-election litigation in Washington. They sought – and obtained – public disclosure of the names of all individuals whose provisional ballots were rejected because their signatures did not match county records. This disclosure ultimately uncovered which provisional ballots had been rejected based on insufficient examination of county records.

#### CONCLUSIONS:

A review of all the litigation over provisional voting in connection with the 2004 election leads to the following tentative conclusions. First and foremost, litigation is more likely to be successful – and yield a public benefit – if its goal is simply to assure the accuracy of the provisional voting process, rather than seeking to undo the result of an election. Of course, as a practical reality, most litigation that actually occurs is likely to be motivated by a desire to affect the outcome of an election, rather than the altruistic, public-spirited motive of improving the accuracy of the process. For this reason, in the future, it will be useful for states to distinguish between (a) streamlined administrative remedial processes, which will enable individual voters to seek redress in the event they believe their provisional ballot rights were mistreated, and (b) a more burdensome judicial proceeding for the purpose of contesting an election result. In the meantime, in some states that have been the focus of widespread national attention because of past problems (for example, Florida and Ohio), citizen groups like the League of Women Voters may have sufficient resources and incentives to bring system-wide litigation that seeks structural reform of the provisional voting process.

Second, and related, the earlier that litigation occurs in the electoral process, the more likely it is to secure rights protected under provisional voting laws. If nothing else, early litigation (even when ruled unmeritorious) has the effect of clarifying the rules in advance. It can put people on notice of what rights they do and do not have. The EAC might be in a position to give guidance to states on how to encourage earlier, rather than later, litigation over provisional ballots. For example, EAC could consider whether it would be a “preferred practice” for states to preclude

any post-election challenges that could have been filed in a pre-election lawsuit. [Tom: I'm not sure whether to include these last two sentences, but they are responsive to your question.]

Third, the more narrow and specific the complaint (and thus the more narrow and specific the remedy sought by a lawsuit), the more receptive the court will be. It is easier for a court to order disclosure and the checking of additional records than it is for a court to sustain an amorphous Equal Protection claim about disparities in the signature verification process. Although it is too early to say that all Equal Protection challenges to the counting of provisional ballots will be unsuccessful, the speed with which the Washington Supreme Court rejected the Equal Protection claim over the signature matching process indicates that future Equal Protections claims will need to be much more specific about the disparities they allege in order to have a chance of success.

In sum, if litigation is to occur over provisional voting in 2006 or 2008, it would be better if the litigation were to occur as early as possible before Election Day, focused specifically on the ways state laws are allegedly deficient and should be remedied. Such litigation can have the virtue of clarifying the rules applicable to provisional voting and, where necessary, assuring that the rights protected by provisional voting laws are indeed enforced. Such pre-election lawsuits, of course, do not ask the court to change which candidate wins the election, and one lesson of the 2004 experience is that litigation is least valuable when it seeks that kind of outcome-altering decree.

**Question 4: How effective was provisional voting in enfranchising qualified voters?**

Providing an answer to this question poses a considerable challenge. To evaluate the decisions of local election officials' decisions on how to inform voters about the possibility of provisional voting and then whether to count a provisional ballot demands information about the eligibility or registration status of each provisional voter. That information is not available.

What is known, with reasonable confidence, is the number of provisional ballots cast and provisional ballots counted. Provisional ballots enfranchised 1,231,429 citizens, or 1.01% of the total turnout in 2004. Nationwide, 1,933,863 provisional ballots were cast, 1.6% of the total turnout. Of those ballots, 63.7% were subsequently verified and included in the final vote tally. These ballots were cast by voters who otherwise would have been turned away at the polls.

Not knowing the total number of registered voters who might have voted but could not makes estimating the effectiveness of provisional voting quantitatively impossible. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes are lost in presidential elections due to the causes shown in the table below. The estimate is a rough approximation, but may provide data that begins to assess the order of magnitude of the pool of potential voters who might have been helped by the provisional ballot process.

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

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. Thus a rough-and-ready estimate of the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A very rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)\*. Whatever the precise figure, concluding that

\* Since this tentative conclusion is based on imprecise estimates, caution suggests another interpretation of the data be considered as well. The category of "registration mix-ups" was developed as a measure of the states' registration systems as included in the Census Bureau's Current Population Survey. The CPS after each asks people if they were registered and if they voted. It gives breakdowns of reasons why people did not vote.

Survey respondents 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. Thus the arrival of provisional voting in the 18 "News" increased the number voting by only 0.1%. We prefer the conclusion in the text, but this alternate interpretation may well be correct.

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there is considerable room for improvement seems reasonable.

Several states came to just that conclusion. Legislative activity suggests that the states were less than satisfied with the effectiveness of their processes. State legislation adopted since the election points to 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.
- 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.

Another indication of lack of effectiveness is legal challenges to the process. Voters or other parties have sought court review of local officials' decisions.

- In Washington State a long legal battle over the gubernatorial election resulted in calls for reform in the way provisional ballots are evaluated. But much of the furor was over provisional ballots that possibly should not have been counted rather than over ballots that were rejected in error.
- In North Carolina's much-disputed election for Superintendent of Public Instruction, the most contentious debate concerning provisional ballots hinged on the issue of ballots cast outside the correct precinct rather than the qualifications of the voter to cast the ballot.

In general, the courts have been clear that a voter's ballot should not be rejected when the invalidity was caused by a ministerial error by election officials. In New York, the court placed upon election officials a duty to direct voters to the correct district once they are inside the correct polling place, but the voter has the obligation to arrive at the correct polling place.

The courts have also held that states cannot categorically deny provisional ballots to voters, a holding that broadens the concept of provisional voting beyond the fail-safe concept. Unfortunately, these decisions could operate to decrease the chance that a ballot will actually be counted. Even if a precinct worker determines that a potential voter is seeking to vote in the wrong precinct, the voter cannot be denied a provisional ballot and simply directed to the correct polling place. If the voter demands a provisional ballot, it must be provided, even if it will not be counted if cast in the wrong precinct. Clearer instructions to poll worker and voters could ameliorate the unintended consequences of these court decisions.

Ultimately, second-guessing the determinations of election officials on counting ballots is likely

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to be fruitless outside of a court hearing on particular ballots and specific decisions. Aggregate data from the states, however, indicates that some states were more effective than others in enfranchising voters through the provisional ballot.

In states that used a provisional ballot before HAVA ("Old" states), a higher proportion of voters were enfranchised by provisional ballots than in "New" states. In the 25 states that had some experience with provisional voting before HAVA, a higher portion to 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.

A reasonable assumption is that potential voters in both the old states and new states encountered similar problems that made it impossible to cast a regular ballot. But they had different provisional systems to navigate, and consequently they experienced different outcomes. Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the new states. This provides more evidence that there is considerable room for improvement.

If experience with provisional voting does turn out to be the 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 guidance from the EAC on best practices and more consistent management could sharpen the lessons learned from that experience.

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. The other possibility is that the "New" states have a political culture different from the "Old" states. That is, underlying characteristics of the "New" states political system may be the reason they had not adopted some form of provisional voting as the "Old" states did.

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, re-registering after changing address. Or they may value keeping control at the local level, rather than ceding some 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 ballot will be harder and take longer to achieve.

## **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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HAVA was designed to provide registered voters who found themselves absent from the voters' list at polling places a way to exercise their right to vote. It requires that certain voters be given provisional ballots and that those ballots be counted if they are later determined eligible under state law. The act gave states broad latitude in how to implement provisional voting, including who beyond the required categories of voters should receive provisional ballots and how to determine if provisional ballots that are cast should be counted.

There was considerable variation in how provisional ballots were distributed and counted in the 2004 election. Little consistency existed among and within states in the way provisional ballots were used.

The use of provisional ballots was not distributed evenly across the country. Indeed, 6 states (California, New York, Ohio, Arizona, Washington, and North Carolina) accounted for more than two-thirds of all the provisional ballots cast in the 2004 election. Wide variation was found across the nation, even when overall state size and turnout was taken into account.

- In Alaska, provisional votes accounted for 7% of all votes cast on Election Day. In 22 other states provisional ballots made up less than 0.5% of votes on Election Day.
- The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware.
- The range of ultimate inclusion of provisional ballots in final vote tallies was immense: The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.

The greatest source of this variation was the state's experience or lack of experience with provisional voting. In experienced states, a higher proportion of voters cast provisional ballots and a higher percentage of provisional ballots were counted than in states implementing provisional voting for the first time.

In the 25 states that had some experience with provisional voting before HAVA, a higher portion to 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.

- The 25 experienced states averaged about 2% (2.17%) of the total vote cast as provisional ballots. This was 4 times the rate as in states new to provisional, which averaged less than half a percent (0.47%).
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion of the new states, which counted just 33% of cast provisional ballots.

- 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.
- In short, the share of provisional ballots in the total vote was six times greater in experienced states than in new states.

Other influences on the variation among the states included:

- The more rigorous the verification requirements of the voter's identity and registration status, the smaller the percentage of provisional ballots that were counted.
  - 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 certified
  - In the 14 states that required an affidavit 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.
  - 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 (52%) of these were certified. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office.
- Voter registration databases provided information that reduced the number of provisional ballots counted. 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%).
- States that allowed out-of-precinct ballots counted 56% of the provisional ballots. States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.
  - In experienced states, this was even more pronounced. 52% of ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
  - If all states counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.

A final word about the variation among the states:

High-Low rating of Percent of PV Ballots Cast as part of Turnout

\* High-Low rating of Percent of PV Ballots Cast that were Counted Cross-tabulation

Count

		High-Low rating of Percent of PV Ballots Cast that were Counted		Total
		Less than 50% Counted	More than 50% Counted	
High-Low rating of Percent of PV Ballots Cast as part of Turnout	Less than 1% of Total Turnout was PV	21	5	26
	More than 1% of Total Turnout was PV	1	16	17*
Total		22	21	43

As the table above shows, the nation can be divided into two groups of states: those that made significant use of provisional ballots (more than 1% of total turnout was cast as provisional ballots) and those that did not. The difference in how these two groups evaluated those ballots that were cast was striking. In states where high levels of provisional ballots were cast, high levels were also counted. In states where low levels of provisional ballots were cast, low levels were typically counted.

The table shows the relationship between use of provisional ballots in the states and the determination by the state that a provisional ballot should be counted. The relationship is strong (Yule's  $Q = 0.97$ ), clear, and significant. In 26 states less than 1% of voters cast a provisional ballot. In 21 of those states, less than half the ballots cast were counted. In 17 states, more than 1% of voters cast a provisional ballot, and in 16 of those states more than half the ballots were counted.

No ready conclusions can be drawn about why these results occur. The data could suggest that states where high levels of ballots were cast were overwhelmed by the sheer volume of them, resulting in insufficient critique of each ballot, or conversely that they were simply more experienced in making evaluations and were better able to identify legitimate ballots. It is possible that states with few ballots cast did not invest the time and effort to properly evaluate them, because there were so few of them, or it is possible that they were better able to dedicate the time to such an investigation and properly weeded out invalid ballots. Further research is required to better ascertain the reasons for these disparities.

Variation within states

---

\* These states are: Alaska, Arizona, California, Colorado, District of Columbia, Iowa, Kansas, New York, Washington, Utah, Ohio, North Carolina, Nebraska, Maryland, New Mexico, New Jersey, and West Virginia.

023436

Even within states consistency was hard to find. Counties differed widely in the rate at which ballots were cast and counted, suggesting that other factors beyond statewide regulations or administrative requirements were at play. This was true in both new and old states.

Election Line, for example, found 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.

Of the 20 States for which we have gathered county-level provisional ballot data, the rate of counting these ballots frequently 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 impact the use of provisional ballots.

#### Election Official's Perceptions

In addition to the statistical differences among how states handled provisional voting, there were also differences in how election officials prepared for and evaluated the use of provisional ballots. A survey conducted by the Eagleton Institute at Rutgers University found that county election officials reported different perceptions of provisional balloting, depending upon whether they came from "Old" or "New" States. Both groups reported gaining help from state election offices on how to implement provisional balloting, but in different ways.

- Officials from "new" states reported receiving more guidance on how to evaluate ballots once cast, while officials from "old" states reported receiving more guidance on how to design ballots. Both groups regarded the guidance they received as being helpful.
- Officials from "old" states were more likely to report that they counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.
- Officials from "new" states were more likely to report that more information should have been provided to voters about the jurisdiction where provisional ballots must be cast in order to be counted and that more time was needed to implement provisional voting procedures.
- Officials from "old" states were more likely to report that provisional voting sped up and improved polling place operations and that it helped officials to maintain more accurate registration databases.
- Officials from "new" states were more likely to agree that provisional voting created unnecessary problems for election officials and poll workers.

This data can be interpreted either of two ways. First, experience and familiarity with provisional voting may be the key factor in the degree to which provisional voting is used and in how election officials perceived provisional balloting. Those officials who were more familiar and experienced with the system had more positive reactions to provisional voting and its worth. 81% of officials from experienced states reported that “there is a need to offer voters the opportunity to cast provisional ballots”, while only 62% from new states did so.

But another way of explaining the difference is less rosy for provisional ballots. It may be that the states new to provisional balloting have a political culture somewhat different from the states that had offered a provisional ballot before HAVA. The new states may have a history of striking a different balance among the competing voting objectives of access, security, and administrative practicality. Officials in those states may believe that the fail safe offered by provisional voting broadens access at the expense of security and burdens election administrators beyond any perceived benefit. Further survey research could help resolve this question.

### Conclusion

States that had previously had some form of provisional ballots and those that did not had different experiences in 2004. Those states that had used a provisional ballot before HAVA states had more ballots cast, found higher levels of those ballots to be legitimate, and had much higher levels of provisional ballots in their final vote tallies. Election officials in those states also felt that provisional ballots were easier to administer and more worthwhile than did their counterparts in states new to provisional voting. The strongest influence noted in this study was simply that of experience with the process.

If the difference is mostly one of experience, in subsequent elections, officials will be more prepared for and comfortable with the implementation of provisional ballots. This should lead to greater consistency among the states and more positive ratings of it as a system. If, on the other hand, the different experiences with provisional ballots reflects different political cultures among the states, consistency among the states may take longer to increase.

Other factors, such as verification laws and requirements for whether out-of-precinct ballots may be counted, will continue to cause variance across the country, but as voters and election officials become more familiar with the system, that variance may stabilize. In sum, provisional balloting was applied inconsistently in 2004, returning a wide range of results. Since the states have considerable latitude in how they meet HAVA’s requirements for provisional voting, a considerable degree of variation among the states is to be expected in the future. If that variation stems from differences in political culture among the states, it is likely to persist.

023439

## **Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

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This question demands two different kinds of answers. First, how do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process? Second, objectively how well did the process appear to be managed?

While essentially all (98%) county-level local elections officials considered the instructions they received from their state governments to be “useful” or “very useful,” the crucial question is how well did the process work on election day? The lack of consistency among and within states in the use of provisional ballots and evaluating those ballots indicates considerable variation in the understanding of the process by election officials.

Four out of ten local election officials felt poll workers needed more training to understand their responsibilities. One sign of dissatisfaction with the functioning of the provisional voting process is the number of states that have amended their statutes on provisional voting to include specific language about poll worker training. Among these states are Colorado, Indiana, New Mexico and Washington.

Statutes, of course, reflect only part of the story. For example, Alabama – a state new to provisional voting – undertook a concerted training effort on how to handle and count provisional ballots. It also created a notification system whereby voters could verify if their vote counted within 10 days of casting their ballots. These steps were not dictated by statute, but reflected the initiative of local elections officials. Their leadership indicates a good understanding of their responsibilities under HAVA and the state statute.

More than 8 out of 10 county-level elections officials reported receiving instructions from their state government regarding the implementation of provisional voting. Topics covered in those instructions from the states included:

- How to administer the provisional voting system
- Who is eligible to vote using a provisional ballot
- How individuals vote using a provisional ballot
- The jurisdiction where individuals can vote by provisional ballot
- Whether the provisional ballot could be used as an application to update the voter’s registration
- How to train poll workers to process provisional ballots
- How to provide voters with the opportunity to verify if their provisional ballot was counted
- Guidelines for determining which provisional ballots are to be counted
- Strategies to reduce the need for voters to use provisional ballots
- How to design the structure of the provisional ballot

Those local election officials believe the most effective efforts to improve the provisional voting process would be to reduce the use of provisional ballots as a failsafe by improving technology – such as registration databases – available to voters and poll workers. Reflecting their understanding of the provisional voting process, local elections officials call for:

- State-sponsored websites where voters can verify their registration status before Election Day.
- Access by poll-workers to statewide voter registration databases at polling place.

While local election officials report that the instructions they received were “useful,” the quality of the information they receive is not the only influence on their performance. They recognize that timing is critically important. They understand that they must receive clear instructions from their state election agencies early enough to absorb, understand, and pass it along as operational instructions to poll workers and voters.

029490

Karen Lynn-Dyson/EAC/GOV  
04/27/2006 09:10 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC  
bcc

Subject Re: Schedule for completion of Prov. Voting and Voter ID  
research 

I think that a number of months ago we envisioned the Eagleton project culminating with a presentation of both of the papers at a public meeting. We had tentatively scheduled that presentation for the June public meeting. Also, we must provide for a review of these studies to EAC's Standards Board and Board of Advisors.

Clearly, plans have changed although we need to figure out how we have Eagleton present its final papers on Provisional Voting (already planned) and Voter Identification (still in process) to the EAC Standards and Advisory Boards.

Look forward to your suggestions on how best to proceed with wrapping up these two efforts.

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

023491

Karen Lynn-Dyson/EAC/GOV  
04/25/2006 12:08 PM

To [REDACTED]  
cc [REDACTED]  
bcc [REDACTED]  
Subject Re: Eagleton/Moritz Next Steps

John and Tom-

A couple of items related to timing over the next several weeks:

1. Is it possible to get your final report on Provisional Voting by COB May 5? If so, I can get this to the four Commissioners for final review and approval. It will then be ready to present to the EAC Board of Advisors and Standards Board at the May 24 meeting.
2. As we discussed I have been working to identify a small group of academics( three or so) who will be available to review the Voter ID paper the week of May 8. The focus of the review will be on Tim's research methodology and statistical analysis. I am fairly certain that this review can be done via conference call , preferably on May 11 or May 12. This would assume each of the reviewers will have spent time reviewing the paper, taking extensive notes and summarizing his or her comments. I expect that you all, Tim, Mike Alvarez and any others from your peer review panel, who have an expertise in research and statistics, will be available for the conference call, as well?
3. While I expect you will be able to have your final Voter ID paper to me sometime during the week of May 15, it is not clear whether or not the paper will be presented to the EAC Standards and Advisory Boards the following week. As you know, the paper contains some controversial information, so the Commissioners may elect to spend additional time reviewing the findings among themselves, and before it is formally presented to our Boards.

Let me know if this schedule works for you all.

Regards-

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

023492

Karen Lynn-Dyson/EAC/GOV  
04/19/2006 02:18 PM

To [REDACTED]  
cc Tamar Nedzar/EAC/GOV@EAC  
bcc  
Subject Re: No cost extension paperwork

Hi John-

As with the last no-cost extension request, I'll need a brief memo/statement outlining why you are making the request for the extension. Included in the narrative should be statement about which tasks have not been completed and why.

I'm pressing ahead with the timeline we discussed last week. I think a May 5 teleconference may be too ambitious- I think it may be more likely that we'll get peer review comments during the week of May 8.

Other than that I think it's doable.

Thanks, as always, for your work.

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

"John Weingart" [REDACTED] >



"John Weingart"  
[REDACTED] >  
04/19/2006 11:48 AM  
Please respond to  
[REDACTED]

To [REDACTED]  
cc  
Subject Re: No cost extension paperwork

Ok. It would be very helpful to us to get that done before the end of April. When do you think you'll be able to get back to us about the schedule for completing the project we discussed last week?

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

[REDACTED]

>  
> John-  
>  
> One of our law clerks, Tamar Nedzar, is working with me on the  
> paperwork for your no-cost extension.  
>

023493

> She will be in touch with you this week, to determine the additional  
> information/documentation she may need to process a request for a  
> no-cost extension through June 30, 2006.  
>  
> Thanks  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

023494

Karen Lynn-Dyson/EAC/GOV  
04/19/2006 11:01 AM

To [REDACTED]  
cc Tamar Nedzar/EAC/GOV@EAC  
bcc  
Subject Re: No cost extension paperwork 

John-

One of our law clerks, Tamar Nedzar, is working with me on the paperwork for your no-cost extension.

She will be in touch with you this week, to determine the additional information/documentation she may need to process a request for a no-cost extension through June 30, 2006.

Thanks

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

023495

Karen Lynn-Dyson/EAC/GOV

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

04/14/2006 02:06 PM

cc

bcc

Subject Fw: March Progress Report

For the Eagleton contract files

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 04/14/2006 02:01 PM -----



"Tom O'Neill"

[Redacted]

04/14/2006 12:50 PM

To [Redacted]

cc [Redacted]

Subject March Progress Report

Karen,

Attached is the Progress Report for March. I think our conversation earlier this week laid out a clear path to a successful conclusion of the project.

Tom O'Neill



Progress ReportMarch06.doc

022696



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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT**  
**March 2006**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

April 14, 2006

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

023497

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from March 1 through March 31, 2006. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In March we revisited our research on Provisional Voting to respond to a question from the EAC's Executive Director. We found that the longer the time provided to evaluate provisional ballots, the greater the percentage that are counted. Based on the comments of the Peer Review Group, we revised our statistical analysis of the effects of voter ID requirements on turnout and distributed the revised draft to the PRG again. We received further comments from three PRG members, who expressed confidence in the analysis. Their comments are now reflected in the latest draft, as presented to the EAC on April 3.

We polished the draft report on Voter ID issues based on preliminary comments by the EAC. The results of that revision were incorporated in the briefing we prepared for delivery on April 3 to the EAC Commissioners in Washington. That meeting had originally been envisioned as a Closeout Conference. While we have met the schedule provided under the no-cost extension to the contract, the EAC has requested that we take additional time to revise the Voter ID report based on comments at the April meeting, arrange another meeting of the PRG, and, perhaps, undertake additional research on Voter ID over time. As this report is being prepared, we are exploring those options.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting. Please direct questions or comments about this report to [REDACTED]

03/29/06

## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We received comments on the November draft report in a teleconference on February 22 with EAC Executive Director Tom Wilkey and Contract Manager Karen Lynn-Dyson. We are now revising and polishing the draft in accord with many of the comments by the Commissioners.

We have analyzed the effect of the different time periods for the evaluation of provisional ballots established by the states on the percentage of provisional ballots that end up being counted. The results indicate that longer time periods result in more ballots being counted. That finding will be incorporated in the revised, final draft report.

Time period	Number of States	% PB Counted
< 1 week	14	35.4%
1 – 2 weeks	15	47.1%
> 2 weeks	14	60.8%

### Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. The EAC has accepted that recommendation. Our final report will include recommendations for promulgation by the Commission as “Best Practices,” but will not include a proposed “Guidance Document,” referred to in Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance).

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is now the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has completed the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. The results of its work constitutes the compendium of legislation, administrative regulations, and case law called for under this task. This month the Moritz team reviewed state statutes and regulations on the time period allowed for the evaluation of provisional ballots. Its report provided the basis for the statistical analysis of the effect of greater time on the number of ballots counted.

**Description:** The Moritz team has compiled statutes on Voter Identification, and has provided a summary analysis of its research, including litigation, included in the draft of the Voter ID paper that has now been reviewed by the Peer Review Group.

**Progress:** The review of current voter identification litigation nationwide is now included in the draft report.

**Work Plan:** In the remaining month of the project, Moritz and Eagleton will continue to work together to develop best practices in the area of voter identification, based on our combined research and the case law.

### RESEARCH EFFORTS

We continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. The table displaying this data is challenging to complete.

### VOTER ID AND TURNOUT ANALYSIS

We revised the analysis of the effect of different voter ID requirements on turnout following the meeting of the PRG in February. The revision was distributed to the PRG in March, and 3 members of the PRG commented on the revision at the end of the month. They pointed to a few areas to clarify the analysis and expressed overall confidence in the quality of the work.

**Description:** The analysis suggests that more stringent voter ID requirements reduce turnout by several percentage points. We reviewed the analysis, looking at

participation compared to both the Voting Age Population and the Citizen Voting Age population.

**Progress:** The PRG review strengthened the analysis. We have incorporated the results in the revised draft of our report, as distributed to the EAC for the April 3 meeting. It is summarized in the PowerPoint presentation prepared in March for the April meeting.

**Challenges:** The models we are using, while sophisticated, are difficult to run and interpret. The analyses are time-consuming. The PRG's counsel has assisted in meeting this challenge.

**Work Plan:** We completed a draft of the Voter ID report for the EAC in March. Based on the EAC's comments at the April meeting, we are revising the paper once again for the final report.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** With its meeting to review the Voter ID paper, the PRG completed its work on this project. Several members of the PRG did comment on the revised statistical analysis of voter turnout. Members may be called together again for a review of our final revision, if changes to the schedule are approved by the EAC.

**Challenges:** No new challenges were encountered.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our

system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

## INTRANET

**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

## **FINANCIAL REPORT**

As agreed in a telephone conversation with Karen Lynn-Dyson on April 13<sup>th</sup>, a detail of expenses incurred from the project during March and April will be sent under separate cover in early May to Ms. Dianna Scott, Administrative Officer at the EAC.

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. The contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

023503

Karen Lynn-Dyson/EAC/GOV  
04/11/2006 05:05 PM

To [REDACTED]  
cc: tom.ross@eac.gov  
bcc  
Subject Re: Eagleton/Moritz Next Steps

Gents-

May we change the date of our call to Thursday at 3:15 rather than tomorrow at 3:15?

Thanks

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

"John Weingart" [REDACTED]



"John Weingart"  
[REDACTED]  
04/10/2006 12:33 PM  
Please respond to  
[REDACTED]

To [REDACTED]  
cc [REDACTED]  
Subject Re: Eagleton/Moritz Next Steps

Karen - Tom and I are both available this Wednesday or Thursday between 3:15 and 5:00. Any time in there work for you?

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

klynndyson@eac.gov wrote:

>  
> Will wait to hear from you.  
>  
> Best-  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue, NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

023504

Karen Lynn-Dyson/EAC/GOV  
04/10/2006 04:16 PM

To [redacted]  
cc tom\_eneill@verizon.net  
bcc Thomas R. Wilkey/EAC/GOV@EAC; Bert A.  
Benavides/EAC/GOV@EAC  
Subject Re: Eagleton/Moritz Next Steps

Let's chat on Wednesday at 3:15.

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

"John Weingart" [redacted]



"John Weingart"  
[redacted]  
04/10/2006 12:33 PM  
Please respond to  
[redacted]

To [redacted]  
cc [redacted]  
Subject Re: Eagleton/Moritz Next Steps

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klynndyson@eac.gov wrote:

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

023505

Karen Lynn-Dyson/EAC/GOV  
04/07/2006 12:03 PM

To [REDACTED]  
cc [REDACTED]  
bcc  
Subject Re: Eagleton/Moritz February Report 

Shall we have a call on Wednesday, April 12 at 1:00?

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

023506

Karen Lynn-Dyson/EAC/GOV  
04/07/2006 05:17 PM

To [REDACTED]  
cc [REDACTED]  
bcc  
Subject Re: Eagleton/Moritz Next Steps

Will wait to hear from you.

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

023507

Karen Lynn-Dyson/EAC/GOV

04/06/2006 05:31 PM

To [REDACTED]

cc [REDACTED]

bcc

Subject Re: Eagleton/Moritz February Report 

Sorry to have missed you on Monday, John.

I think all of the Commissioners found the sessions extremely helpful and are much clearer about the work that has been done on the Voter ID topic.

Shall you Tom and I have a conversation early next week about next steps- specifically what you anticipate doing on your end to create final reports for both Voter ID and Provisional Voting and what additional feedback, if any, you'd like to get from the EAC prior to submitting these final reports?

We have talked about the possibility of having you all present your final reports at our June public meeting; that idea is still under review, however.

Look forward to hearing from you about a call sometime next week.

Please be certain to thank all of the project staff for coming to DC and taking the time to meet with the Commissioners.

Regards-

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

023508

Karen Lynn-Dyson/EAC/GOV  
03/29/2006 01:38 PM

To [REDACTED]  
cc  
bcc  
Subject Re: no-cost extension 

John-

First presentation runs from 11:00 to 12:30  
Second presentation runs from 2:00 to 3:30

See you then

Karen Lynn-Dyson  
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023509

Karen Lynn-Dyson/EAC/GOV  
03/29/2006 01:36 PM

To "Tom O'Neill" [REDACTED]  
cc  
bcc

Subject Re: Census Bureau report on Voting and Registration 

Thanks, Tom. Also, can you be certain Tim provides a footnote in his work which defines a probit analysis, as we discussed yesterday?

See you Monday at 11:00.

Karen Lynn-Dyson  
Research Manager  
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023510

Karen Lynn-Dyson/EAC/GOV

To Thomas R. Wilkey/EAC/GOV@EAC

03/28/2006 04:50 PM

cc [REDACTED]

bcc

Subject FYI-Eagleton

Turns out that Eagleton was doing a brief conference call with their project staff this afternoon and they asked me to participate briefly. Looked for you guys and you were in the Commissioner Retreat. Basically shared some very general thoughts with them and framed it as a series of questions/issues that might arise when they make their presentations next week.

Spoke of the CVAP vs. VAP issue, exit polls and CPS data versus using our Election Day survey and speaking with Election Officials about these topics. Also framed the issue of possible bias in their report by suggesting that they start out explaining how and why they have arrived at their statement about voter ID (burdensome, onerous, etc). Also suggested framing this by speaking of African American and elderly voter ID attitudes that appear to contrast with attitudes expressed by Hispanic voters. Did also ask about why they didn't look at Asian voters and if they included the March 15 2006 Census Bureau report in their analysis.

They took these comments under advisement and will be ready to address these and other topics at Monday's meetings.

K

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023511

Karen Lynn-Dyson/EAC/GOV  
03/16/2006 10:00 AM

To: [REDACTED]  
cc:  
bcc:  
Subject: Re: Voter ID Paper --Final Draft 

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

Regards-  
K

Karen Lynn-Dyson  
Research Manager  
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023512

Karen Lynn-Dyson/EAC/GOV  
03/15/2006 05:37 PM

To [REDACTED]  
cc  
bcc

Subject RE: Draft comments on the Provisional Voting document 

Hi Tom-

Just checking in on the ETA for the Voter ID Best Practices document.

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

023513

Karen Lynn-Dyson/EAC/GOV  
03/24/2006 11:50 AM

To [REDACTED]  
cc [REDACTED]  
bcc  
Subject Re: Eagleton/Moritz February Report 

Just wanted to let you know that I have asked the Commissioners to provide me feedback on your report by COB today.

I will assemble their comments and pass them on to you by early next week at the latest.

Regards-

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

023514

Karen Lynn-Dyson/EAC/GOV  
03/28/2006 04:05 PM

To [REDACTED]  
cc [REDACTED]  
bcc

Subject Re: Eagleton/Moritz Report 

Failed to ask if your report uses/takes into account the March 15,2006 Census Bureau report on Voting and Registration in the election of November 2004.  
Assume it does.

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

023515

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

03/28/2006 10:25 AM

cc

bcc Paul DeGregorio/EAC/GOV@EAC

Subject Fw: Voter ID Paper --Final Draft

Let's discuss once you've had a chance to review. As stated, there are a number of their statistical manipulations which I question.

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 03/28/2006 09:20 AM ---



"Tom O'Neill"

03/16/2006 09:27 AM

To [REDACTED]

cc

Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone [REDACTED]

Tom O'Neill

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Thursday, March 16, 2006 9:00 AM  
**To:** [REDACTED]  
**Subject:** Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

023516

Regards-  
K

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



tel: [REDACTED]

023517

**Analysis of Effects of Voter Identification Requirements on Turnout**  
**Tim Vercellotti**  
**Eagleton Institute of Politics**  
**Rutgers University**

**Introduction**

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

Deleted: , such as a driver's license.

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

**Types of voter identification requirements**

Each state is classified as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>1</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

Deleted: ID

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus

<sup>1</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

#### Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ( $r = -.21$ ,  $p < .0001$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ( $r = -.16$ ,  $p < .0001$ ). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.<sup>2</sup> Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I included whether the county was in a presidential battleground state (any state in which the

<sup>2</sup> Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.