

margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).³ The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.⁴ Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ($p = 0.0003$).

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I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

³ The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

⁴ The interactions are labeled in Tables 2 and 3 as VID*African-American, VID*Hispanic, and VID*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

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[Table 3 here]

The effects of the minimum requirements are not statistically significant ($p = 0.15$). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference ($p = 0.08$), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.⁵ The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the

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⁵ It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

023521

identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

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The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election. In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

023522

Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.⁷ I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore

⁷ In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.⁸ If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.⁹

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify

Comment [02]: The turnout figures shown in the analysis of the aggregate data range of 57.3% turnout to 63.1% turnout. When using the individual data, based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

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⁸ See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

⁹ I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

023524

themselves by giving their name, and the probability declined to 73.1 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category - voters with some college education).

Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

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The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary, from stating one's name to attesting to one's identity in an affidavit.

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Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

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Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

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In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?¹⁰ Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers, to handle questions about, and potential disputes over, voter identification requirements.

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¹⁰ The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

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| Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements | | | |
|---|---|--|---|
| Maximum Requirement | | Minimum Requirement | |
| Voter Identification Required in the States | Mean Voter Turnout for States in that Category | Voter Identification Required in the States | Mean Voter Turnout for States in that Category |
| State Name | 63.1 % | State Name | 61.3 % |
| Sign Name | 58.6 % | Sign Name | 60.4 % |
| Match Signature | 62.1 % | Match Signature | 59.2 % |
| Provide Non-Photo ID | 57.8 % | Provide Non-Photo ID | 57.6 % |
| Provide Photo ID | 57.3 % | Swear Affidavit | 58.7 % |
| Average Turnout for All States | 59.6 % | | |

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Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

| Variable | Basic Model | | Model with Interactions | |
|------------------------------------|-------------------------|----------------|-------------------------|----------------|
| | Unstandardized Estimate | Standard Error | Unstandardized Estimate | Standard Error |
| Intercept | 0.64 | 0.01 | 0.70 | 0.02 |
| Voter ID requirements | -0.02** | 0.004 | -0.04** | 0.005 |
| Battleground State | 0.04* | 0.02 | 0.04* | 0.02 |
| Competitive Senate/Governor's Race | 0.04* | 0.02 | 0.04* | 0.02 |
| % Age 65 and Older | 0.50** | 0.03 | 0.51** | 0.03 |
| % African-American | 0.02 | 0.01 | 0.04 | 0.04 |
| % Hispanic | -0.17** | 0.01 | -0.38** | 0.05 |
| % Below poverty line | -0.01** | 0.0002 | -0.01** | 0.001 |
| VID * African-American | ---- | ---- | -0.004 | 0.01 |
| VID * Hispanic | ---- | ---- | 0.06** | 0.01 |
| VID * Poverty | ---- | ---- | 0.001** | 0.0002 |
| -2 Log Likelihood | -8234.5 | | -8253.5 | |

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)

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Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements

| Variable | Basic Model | | Model with Interactions | |
|------------------------------------|-------------------------|----------------|-------------------------|----------------|
| | Unstandardized Estimate | Standard Error | Unstandardized Estimate | Standard Error |
| Intercept | 0.62 | 0.01 | 0.66 | 0.02 |
| Voter ID requirements | -0.008 | 0.005 | -0.02** | 0.006 |
| Battleground State | 0.04** | 0.01 | 0.04* | 0.02 |
| Competitive Senate/Governor's Race | 0.03 | 0.02 | 0.03 | 0.02 |
| % Age 65 and Older | 0.50** | 0.03 | 0.49** | 0.03 |
| % African-American | 0.02 | 0.01 | 0.02 | 0.03 |
| % Hispanic | -0.17** | 0.01 | -0.37** | 0.05 |
| % Below poverty line | -0.01** | 0.0003 | -0.01** | 0.001 |
| VID * African-American | ---- | ---- | -0.004 | 0.01 |
| VID * Hispanic | ---- | ---- | 0.06** | 0.01 |
| VID * Poverty | ---- | ---- | 0.001** | 0.0002 |
| -2 Log Likelihood | -8222.7 | | -8229.4 | |

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)

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| Variable | Maximum requirements | | Minimum requirements | |
|-----------------------------------|-------------------------|----------------|-------------------------|----------------|
| | Unstandardized Estimate | Standard Error | Unstandardized Estimate | Standard error |
| Voter ID requirements | -0.04* | 0.01 | -0.05** | 0.01 |
| Hispanic | -0.06 | 0.05 | -0.05 | 0.05 |
| Black | 0.22** | 0.04 | 0.22** | 0.04 |
| Other race | -0.23** | 0.04 | -0.23** | 0.04 |
| Age in years | 0.01** | 0.001 | 0.01** | 0.001 |
| Education | 0.12** | 0.005 | 0.11** | 0.005 |
| Household income | 0.03** | 0.003 | 0.03** | 0.003 |
| Married | 0.20** | 0.02 | 0.20** | 0.02 |
| Female | 0.09** | 0.01 | 0.09** | 0.01 |
| Battleground state | 0.18** | 0.04 | 0.19** | 0.04 |
| Competitive race | 0.05 | 0.05 | 0.05 | 0.05 |
| Employed | 0.05 | 0.04 | 0.05 | 0.04 |
| Member of workforce | -0.04 | 0.05 | -0.04 | 0.05 |
| Native-born citizen | 0.03 | 0.04 | 0.04 | 0.05 |
| Moved within past 6 months | -0.27** | 0.03 | -0.27** | 0.03 |
| Constant | -4.48** | 0.20 | -4.46** | 0.20 |
| Pseudo-R-Squared | 0.09 | | 0.09 | |

Notes:

N = 54,973 registered voters

$p < .05^{**}$ $p < .01^{**}$ (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

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| Table 5. Predicted probability of voter turnout – full model | | |
|---|----------------------------|----------------------------|
| | Maximum requirement | Minimum requirement |
| State name | 0.912 | 0.911 |
| Sign name | 0.906 | 0.903 |
| Match signature | 0.900 | 0.895 |
| Non-photo ID | 0.894 | 0.887 |
| Photo ID | 0.887 | ---- |
| Affidavit | ---- | 0.878 |
| Total difference from lowest to highest | 0.025 | 0.033 |
| N | 54,973 | |
| <p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p> | | |

| Table 6. Predicted probability of voter turnout – White and Hispanic voters | | | |
|---|----------------------------|----------------------------|----------------------------|
| | White voters | | Hispanic voters |
| | Maximum requirement | Minimum requirement | Minimum requirement |
| State name | 0.920 | 0.922 | 0.870 |
| Sign name | 0.915 | 0.915 | 0.849 |
| Match signature | 0.909 | 0.907 | 0.826 |
| Non-photo ID | 0.902 | 0.899 | 0.800 |
| Photo ID | 0.895 | ---- | ---- |
| Affidavit | ---- | 0.890 | 0.773 |
| Total difference from lowest to highest | 0.025 | 0.032 | 0.097 |
| N | 44,760 | | 2,860 |
| <p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p> | | | |

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Table 7. Predicted probability of voter turnout - Age groups

| | 18 - 24 | | 25 - 44 | | 45 - 64 | 65 and older |
|---------------------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | Maximum requirements | Minimum requirements | Maximum requirements | Minimum requirements | Minimum requirements | Minimum requirements |
| State name | 0.839 | 0.831 | 0.831 | 0.831 | 0.936 | 0.916 |
| Sign name | 0.819 | 0.814 | 0.820 | 0.817 | 0.932 | 0.910 |
| Match signature | 0.797 | 0.759 | 0.808 | 0.803 | 0.927 | 0.904 |
| Non-photo ID | 0.774 | 0.775 | 0.796 | 0.788 | 0.923 | 0.898 |
| Photo ID | 0.750 | ---- | 0.783 | ---- | ---- | ---- |
| Affidavit | ---- | 0.754 | ---- | 0.773 | 0.918 | 0.892 |
| Total difference -- lowest to highest | 0.089 | 0.077 | 0.048 | 0.058 | 0.018 | 0.024 |
| N | 5,065 | | 20,066 | | 20,758 | 9,084 |

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Comment [p3]: Can you add something to this footnote to once again clarify the difference between the very high turnout figures derived from the CPS respondents self-reports and actual measures of turnout which tend to be in the 50% - 65% range.

023535

Table 8. Predicted probability of voter turnout – Voters above and below the poverty line

| | Voters above the poverty line | | Voters below the poverty line |
|---|-------------------------------|---------------------|-------------------------------|
| | Maximum requirement | Minimum requirement | Minimum requirement |
| State name | 0.920 | 0.922 | 0.784 |
| Sign name | 0.915 | 0.915 | 0.772 |
| Match signature | 0.909 | 0.907 | 0.758 |
| Non-photo ID | 0.903 | 0.899 | 0.745 |
| Photo ID | 0.897 | --- | --- |
| Affidavit | --- | 0.891 | 0.731 |
| Total difference from lowest to highest | 0.023 | 0.031 | 0.053 |
| N | 49,935 | | 5,038 |

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

023536

Table 9. Predicted probability of voter turnout – By education

| | Less than high school | | High school | | College | | Graduate school | |
|---------------------------------------|-----------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| | Maximum requirement | Minimum requirement | Maximum requirement | Minimum requirement | Maximum requirement | Minimum requirement | Maximum requirement | Minimum requirement |
| State name | 0.775 | 0.779 | 0.866 | 0.869 | 0.960 | 0.959 | 0.977 | 0.979 |
| Sign name | 0.759 | 0.762 | 0.858 | 0.859 | 0.956 | 0.954 | 0.973 | 0.973 |
| Match signature | 0.743 | 0.743 | 0.850 | 0.848 | 0.951 | 0.950 | 0.968 | 0.967 |
| Non-photo ID | 0.725 | 0.724 | 0.842 | 0.836 | 0.945 | 0.945 | 0.963 | 0.959 |
| Photo ID | 0.708 | ---- | 0.833 | ---- | 0.939 | ---- | 0.957 | ---- |
| Affidavit | ----- | 0.705 | ---- | 0.824 | ---- | 0.940 | ----- | 0.950 |
| Total difference -- lowest to highest | 0.067 | 0.074 | 0.033 | 0.045 | 0.021 | 0.019 | 0.020 | 0.029 |
| N | 4,903 | | 16,361 | | 11,017 | | 5,739 | |

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

0231033

Karen Lynn-Dyson/EAC/GOV
03/30/2006 12:48 PM

To "Tom O'Neill" <tom_oneill@verizon.net> @GOMEXA121174.L
cc [REDACTED]
jd [REDACTED]
[REDACTED]
bcc [REDACTED]
Subject RE: Meeting with EAC April 1 

Greetings All-

Tom O'Neill and I just had a good conversation in which I shared with him the Commissioners comments regarding Monday's meeting.

Long story short- they envision this meeting as one of a question and answer exchange, and not a close-out meeting per se.

They found the process used for the Provisional Voting paper quite satisfying and wish to repeat such a process with this piece of research. Once the Commissioner's have had an opportunity to participate in this exchange I will gather their feedback and share it with Tom and John.

We anticipate that we will have to extension to the Eagleton/Moritz contract in order to accommodate this process and to allow for incorporating these comments into a final draft which will be created.

Look forward to seeing all of you on Monday.

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

023538

Karen Lynn-Dyson/EAC/GOV

04/06/2006 05:24 PM

To [REDACTED]
cc tom_oreill@ [REDACTED]
bcc Gracia Hillman/EAC/GOV@EAC; Sheila A. Banks/EAC/GOV@EAC
Subject Re: Information requested by Commissioner Hillman

Thanks Tim.

I'll be certain to pass your response on to the Commissioner.

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

"Tim Vercellotti" [REDACTED] >



"Tim Vercellotti"

[REDACTED] >

04/06/2006 04:42 PM

Please respond to

[REDACTED]

To K [REDACTED]
cc [REDACTED]
Subject Information requested by Commissioner Hillman

Karen:

It was good to meet with you, your colleagues, and the commissioners on Monday. The feedback has been very helpful as I revise my part of the voter identification study.

Commissioner Hillman asked during and after the meeting for some information from the Current Population Survey. She was curious about the percentage of non-citizens who said they were registered to vote, and the percentage of non-citizens who said they voted in the 2004 election.

I've looked at the questionnaire and the data. The question about citizenship preceded the questions about registration and voting in the survey. If a respondent said she or he was not a citizen of the United States, the respondent did not receive the questions on registration and voting. So, at least from this data set, I cannot discern the percentage of non-citizens who claimed to be registered or to have voted. (That would be fascinating information, indeed.)

Best regards,

Tim Vercellotti

--
Tim Vercellotti, Ph.D.
Assistant Research Professor
Assistant Director, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics
Rutgers, The State University of New Jersey

023539

185 Ryders Lane
New Brunswick, NJ 08901

Phone: (609) [REDACTED]
[REDACTED]

023540

Karen Lynn-Dyson/EAC/GOV

11/15/2005 11:23 AM

To [REDACTED]

[REDACTED]

cc

bcc

Subject Fw: Provisional Voting Report Status and Request for Advice

FYI-

Perhaps we can discuss in the next day or so.

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 11/14/2005 11:22 AM —

Karen Lynn-Dyson/EAC/GOV

11/15/2005 11:22 AM

To [REDACTED]

cc "Duke Martinez" <[REDACTED]@eac.gov>, [REDACTED]

Subject Re: Provisional Voting Report Status and Request for Advice



John-

Many thanks for getting this draft document to us.

Over the next day or so I will spend time with key EAC staff reviewing the document and considering your questions. As you may recall, Commissioner Martinez has taken a prominent role in the review of your initial work and I am certain he will continue to do so. Sadly, the Commissioner lost his mother two weeks ago and, consequently, will not return to the office until next week.

It is likely that EAC staff will not be able to give you a definitive answer on some of your questions until the Monday after Thanksgiving. I will, however, try to answer some of the administrative questions before that time.

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

"John Weingart" <[REDACTED]@eac.gov>



"John Weingart" <[REDACTED]@eac.gov>

023541



11/15/2005 10:53 AM

Please respond to

To "Karen Lynn-Dyson" [REDACTED], "Ruth Mandel"

cc "Tom O'Neill" [REDACTED]

Subject Provisional Voting Report Status and Request for Advice

Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

We are planning to submit our report on Provisional Voting to the EAC by November 18th. Although it is not required in our contract, we will at the same time give copies to the members of the Peer Review Group offering them the opportunity to send us any additional corrections or other comments.

We are considering making all our recommendations for both Provisional Voting and Voter ID in the form of Best Practices. Some of them might well lend themselves to Guidance, but our discussion of the earlier draft with the EAC left us with the clear impression that on this topic the preference was for recommendations for Best Practices rather than a Guidance document. The calendar also argues for the Best Practices route to enable the EAC to give states advice they can use in 2006. (The attached draft timeline would need to be revised if the EAC prefers to propose some of the recommendations as Guidance.)

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule realistic in anticipating EAC comments no later than the week of December 12th on the report we send you at the end of this week?
3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)
4. In any case, we will need a no-cost extension to the contract to carry us past December 31st. How do we make that request?
5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

023542

We look forward to discussing these matters with you.

Thanks, John

--

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



KeyDatesRev1110.doc

023543

DRAFT FOR DISCUSSION

REVISED SCHEDULE FOR EAC PROJECT

November 2005 – February 2006

November 10, 2005

Assumes no guidance document, only analysis and recommended best practices

| DATE | Project Management | Provisional Voting | Voter ID |
|----------------------|--|--|--|
| Week of 10/31 | | Review draft report to EAC (Team) Submit comments on report (Team) | Voter ID Research to TV |
| Week of 11/7 | Status reports to JD for October tasks (all) | Redraft report (TON) Review and approve report (Team) Final draft report (TON) | Research continues (TV) |
| Week of 11/14 | Submit monthly progress report (JD) | Submit report to EAC for review and to PRG for information Discuss with EAC use of Board of Advisors to expand "best practices." (TON, JW) EAC reviews report | Research continues (TV) |
| Week of 11/21 | | EAC review continues | Complete data collection for Voter ID analysis. (TV) |
| Week of 11/28 | | EAC review continues | Draft report on Voter ID analysis (TV) |

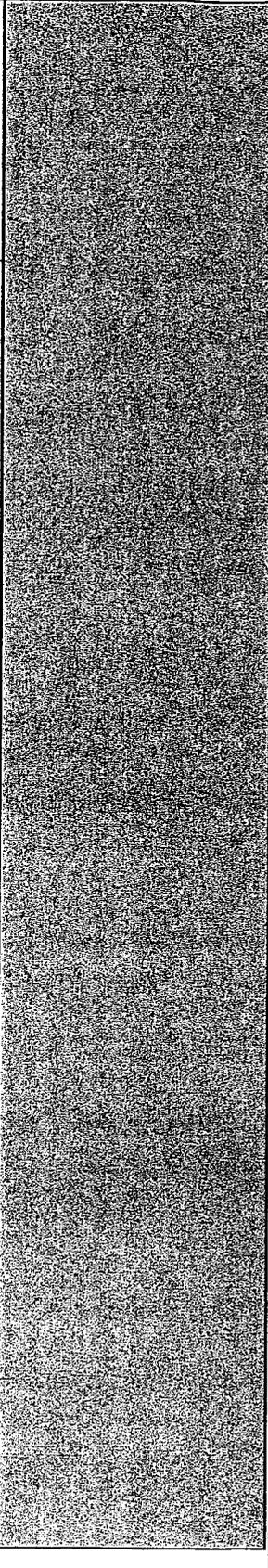
023544

DRAFT FOR DISCUSSION

| | | | |
|-----------------------|---|--|--|
| Week of 12/5 | Status reports to JD for November tasks (all) | EAC review continues | Internal review (PT) |
| Week of 12/12 | Submit monthly progress report (JD) | Receive EAC comments on report Revise and PT review | Revise draft (TV) Draft alternatives (TON) Review and comment on alternatives (PT) |
| Week of 12/19 | | Finalize analysis and best practices to EAC for publication¹ | Complete draft report and alternatives (TV, TON) |
| Week of 12/26 | | | Review draft report and alternatives (PT) |
| Week of 1/2/06 | Status reports to JD for December tasks (all) | | Report and alternatives to PRG |
| Week of 1/9/06 | | | PRG meets and comments Revise (TV & TON) |

¹ If the EAC chooses not to issue a Guidance Document on provisional voting but only to recommend "best practices," the register publication, hearing and comment period may not be required, which would shorten the process by at least 30 days.

DRAFT FOR DISCUSSION

| | | | |
|-------------------------------|--|---|--|
| <p>Week of 1/16/06</p> | <p>Submit monthly progress report (JD)</p> |  | <p>Submit draft report, alternatives and compendium to EAC</p> <p>EAC reviews</p> |
| <p>Week of 1/23/06</p> | | | <p>EAC review continues</p> |
| <p>Week of 1/30/06</p> | | | <p>Comments from EAC</p> <p>Revise (TV & TON)</p> |
| <p>Week of 2/6/06</p> | <p>Status reports to JD for January tasks (all)</p> | | <p>Review and approve revised report and recommendations for best practices (PT)</p> |
| <p>Week of 2/13/06</p> | <p>Submit monthly progress report (JD)</p> | | <p>Submit report and best practices to EAC</p> |
| <p>Week of 2/20/06</p> | <p>FINAL status reports to JD for all tasks (all)</p> <p>Final project and fiscal report to EAC</p> <p>PROJECT ENDS</p> | | |

Margaret Sims /EAC/GOV

11/16/2005 01:12 PM

To [REDACTED]
cc Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Eileen L. Collver/EAC/GOV@EAC, Gavin S.
bcc

Subject RESPONSE REQUESTED-Working Group for Voting Fraud and Voter Intimidation Project

Dear Commissioners:

The consultants' contracts for EAC's voting fraud and voter intimidation project require Tova Wang and Job Serebrov to work in consultation with EAC staff and the Commissioners "to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation". The contracts do not specify the number of working group members but, as EAC has to pay for the group's travel and we want the size of the group to be manageable, I recommend that we limit the number to 6 or 8. **Please let me know if you think that this limit is too conservative**

Attached for your review and comment are two lists of potential working group members for this project. One list was submitted by Job, the other by Tova. Tova and Job have provided brief summaries of each candidate's relevant experience and have placed asterisks next to the names of the individuals whom they particularly recommend. I can provide more extensive biographies of these individuals, if you need them. If EAC agrees that the recommended working group members are acceptable, an equal number may be selected from each list in order to maintain a balanced perspective.

Absent from the attached lists is the name of a representative from the U.S. Department of Justice's Election Crimes Branch. At this time, I am working through the DOJ bureaucracy to determine to what degree Craig Donsanto will be permitted to participate. If he cannot be named as a working group member, we may still be able to use him as a resource.

Please provide your feedback to me no later than Monday , November 28. I am available to meet with you if you would like to discuss this matter further.

Peggy Sims
Research Specialist



Possible Working Group Members -Serebrov.doc Possible Working Group Members- Wang.doc

023547

Possible Working Group Members - Serebrov

I recommend the first four with an *

***Mark (Thor) Hearne II**-Counsel to Republican National Committee; National Counsel to American Center for Voting Rights; National election counsel to Bush-Cheney, '04; Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election; Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission).

***Todd Rokita**-Secretary of State, Indiana; Secretary Rokita strives to reform Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible; Secretary Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues.

***Patrick J. Rogers**-Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico; 1991-2003 General Counsel to the New Mexico Republican Party; Election cases: *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures; *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge; *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues; *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

***David A. Norcross**- Partner, Blank Rome LLP, Trenton NJ, Washington D.C; Chairman, New Jersey Republican State Committee, 1977 – 1981; General Counsel, Republican National Committee, 1993 – 1997; General Counsel, International Republican Institute; Counsel, The Center for Democracy; Vice Chairman, Commission on Presidential Debates; Executive Director, New Jersey Election Law Enforcement Commission

Benjamin L. Ginsberg-Served as national counsel to the Bush-Cheney presidential campaign; He played a central role in the 2000 Florida recount; He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and

National Republican Congressional Committee; His expertise is more in campaign finance.

Cleta Mitchell-Partner in the Washington, D.C. office of Foley & Lardner LLP; She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure; Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies; Her expertise is more in campaign finance law.

Mark Braden-Of counsel at Baker & Hostetler; He concentrates his work principally on election law and governmental affairs, including work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting; His expertise is mainly outside of the voter fraud area.

023549

To: Peggy Sims
From: Tova Wang
Re: Working Group Recommendations
Date: November 12, 2005

*Wendy R. Weiser, Associate Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an expert in federal and constitutional law, has done a great deal of research, writing, speaking, and litigating on voting rights and election law issues. As part of the Brennan Center's wide ranging activities in the area of democracy, Ms. Weiser is currently overseeing an analysis and investigation of recent allegations of voter fraud throughout the country.

*Barbara Arnwine is Executive Director of the Lawyers Committee for Civil Rights Under Law, an organization that for four decades has been at the forefront of the legal struggle to secure racial justice and equal access to the electoral process for all voters. Notably, Ms. Arnwine and the organization have led the Election Protection program for the last several years, a nationwide grassroots education and legal effort deploying thousands of volunteers and using a nationally recognized voter hotline to protect voters' rights on election day.

*Daniel Tokaji, professor and associate director of the Election Law Center at the Moritz College of Law at the Ohio State University, is one of the nation's foremost experts in election law and reform and ensuring equality in the voting system. Professor Tokaji frequently writes and speaks on democracy related issues at academic and practitioner conferences, on such issues as voting technology, fraud, registration, and identification requirements, as well as the interplay between the election administration practices and voting rights laws.

Donna Brazile is Chair of the Democratic National Committee's Voting Rights Institute, the Democratic Party's major initiative to promote and protect the right to vote created in response to the irregularities of the 2000 election, and former Campaign Manager for Gore-Lieberman 2000 (the first African American to lead a major presidential campaign.) Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning, a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

Wade Henderson is the Executive Director of the Leadership Conference on Civil Rights (LCCR) and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), an organization at the forefront of defending voting rights for the last fifty years. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the National Association for the Advancement of Colored People (NAACP)

Robert Bauer is the Chair of the Political Law Practice at the law firm of Perkins Coie, National Counsel for Voter Protection, Democratic National Committee, Counsel to the Democratic Senatorial and Congressional Campaign Committees and Co-Author, Report

of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105th Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country in the area of federal/state campaign finance and election laws.

Laughlin McDonald has been the executive director of the Southern Regional Office of the ACLU since 1972 and as the Director of the ACLU Voting Rights Project, McDonald has played a leading role eradicating discriminatory election practices and protecting the gains in political participation won by racial minorities since passage of the 1965 federal Voting Rights Act. During the past two decades, McDonald has broken new ground by expanding ACLU voting rights cases to include representation of Native Americans in various western states, and written innumerable publications on voting rights issues.

Joseph E. Sandler is a member of the firm of Sandler, Reiff & Young, P.C., in Washington, D.C., concentrating in campaign finance and election law matters, and general counsel to the Democratic National Committee. As an attorney he has handled campaign finance and election law matters for Democratic national and state party organizations, Members of Congress, candidates and campaigns. He served as general co-counsel of the Association of State Democratic Chairs, as general counsel for the Democratic Governors' Association and as counsel to several state Democratic parties.

Cathy Cox is serving her second term as Georgia's Secretary of State, having first been elected in 1998. In 2002 she earned re-election with over 61 percent of the vote, winning 146 out of 159 counties. Because of Secretary Cox's efforts Georgia has become a national leader in election reform. Her initiative made Georgia the first state in America to deploy a modern, uniform electronic voting system in every county

023551

Karen Lynn-Dyson/EAC/GOV

To Eileen L. Collver/EAC/GOV@EAC

08/22/2006 11:21 AM

cc

bcc

Subject Here ya go!



Prov Votingdarrell.rtf Provisional Voting Advisory.doc Provisional Voting intro.doc EAC Guidance on Provisional Voting.rtf Karen Lynn-Dyson

Research Director

U.S. Election Assistance Commission

1225 New York Avenue , NW Suite 1100

Washington, DC 20005

tel:202-566-3123

023552



Elieen L. Collver/EAC/GOV
05/15/2007 02:40 PM

To Peter Schulleri/EAC/GOV@EAC
cc
bcc
Subject Fw: Here ya go!

Elle L.K. Collver
Special Assistant to the Chair
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
office: (202) 566-2256
fax: (202) 566-1392
blackberry: (202) 294-9251

----- Forwarded by Elieen L. Collver/EAC/GOV on 05/15/2007 02:28 PM -----

Karen Lynn-Dyson/EAC/GOV

08/22/2006 11:21 AM

To Elieen L. Collver/EAC/GOV@EAC
cc
Subject Here ya go!



Prov Votingdarrell.rtf Provisional Voting Advisory.doc Provisional Voting intro.doc EAC Guidance on Provisional Voting.rtf Karen

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

023553

RECOMMENDATIONS

Because every provisional ballot counted represents a voter who, if the system had worked perfectly, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use of provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that ballot, but the voter will still have to vote provisionally. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly.

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

Self-evaluation of Provisional Voting – 4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

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

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

SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

023554

PCL XL error

Subsystem: KERNEL

Error: IllegalOperatorSequence

Operator: SetPageScale

Position: 642

023555



U.S. Election Assistance Commission
1225 New York Ave. – Suite 1100
Washington, DC 20005

DATE!!!!!!

EAC Advisory 2005-006: Provisional Voting and Identification Requirements

The U.S. Election Assistance Commission (EAC) has recently received an inquiry regarding whether a state may impose an identification requirement that would limit a potential voter's access to a provisional ballot to which he or she is otherwise entitled under Section 302 of the Help America Vote Act (HAVA) (42 U.S.C. §15482). After consideration of the matter, EAC has concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event their name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot. In explaining this position, this advisory reviews the plain language of HAVA Section 302, examines the differences between traditional and provisional ballots and analyzes the implementation of provisional voting under HAVA Section 303(b). This advisory also addresses the impact of a state's authority to create stricter standards than prescribed by HAVA upon HAVA's provisional voting requirements.¹

Plain Language of HAVA Section 302. The right to cast a provisional ballot is created in Section 302 of HAVA. Pursuant to HAVA, when an individual declares that he or she is a registered and eligible voter in a federal election, that individual "shall be permitted to cast a provisional ballot" if (1) their name does not appear on the official list of eligible voters or (2) "an election official asserts that the individual is not eligible to vote." (Section 302(a)). This right to receive a provisional ballot is contingent upon only one thing (per Section 302(a)(2)), the individual's execution of a written affirmation that he or she is both a registered and eligible voter for the election at issue.² See also, Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 574 (6th Cir. 2004). However, notwithstanding the above, HAVA goes on to recognize that the right to submit a provisional ballot constitutes neither a means to avoid State imposed voter eligibility requirements nor a vote. Instead, HAVA requires election officials at a polling place to

¹ The EAC is the Federal agency charged with the administration of HAVA. While the EAC does not have rulemaking authority in the area of provisional voting, HAVA does require the Commission to draft guidance to assist states in their implementation of HAVA's provisional voting requirements. Although EAC's administrative interpretations do not have the force of law associated with legislative rules, the Supreme Court has long held that the interpretations of agencies charged with the administration of a statute are to be given deferential treatment by Courts when faced with issues of statutory construction. York v. Secretary of Treasury, 774 F. 2d 417, 419 – 420 (10th Cir. 1985) (citing Compensation Commission of Alaska v. Aragon, 329 U.S. 143, 153 – 154 (1963)) See also Christian v. Harris County, 529 U.S. 576 (2000); Edelman v. Lynchburg College, 122 S. Ct. 1145 (2002).

² Moreover, a potential voter determined not to be eligible must be informed of their provisional voting rights per Section 302(a)(1) of HAVA.

023556

transmit a provisional ballot (or information associated with the written affirmation) to appropriate election officials for verification. (Section 302(a)(4) of HAVA). These election officials ultimately determine the voter's eligibility based upon information presented to or gathered by it, in accordance with State law. In this way, the State determines whether any provisional ballot submitted will be counted as a vote. Id.

In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. See Sandusky County Democratic Party, 387 F.3d at 570 and Florida Democratic Party v. Hood, 342 F.Supp 1073, 1079-1080 (N.D. Fla. 2004). A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

Traditional vs. Provisional Ballots. The nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot. Because of this fact, the two processes must be treated differently. While voter identification requirements may serve as a bar to the casting of a traditional ballot, they may not prevent the submission of a provisional ballot.

First, the nature and purpose of traditional and provisional ballots are essentially different. The purpose of a traditional ballot is to allow a confirmed, eligible voter to cast a vote. The purpose of a provisional ballot is to allow individuals whose voter eligibility is challenged to reserve the right to vote by memorializing both their intent to vote and their proposed vote. This is evident by the HAVA processes discussed above. The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has been determined by the State. Hence, the moment it is cast, it becomes an individual's vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right. As the Sixth Circuit Court of Appeals stated:

[T]he primary purpose of HAVA was to prevent on-the-spot denials of provisional ballots to voters deemed ineligible to vote by poll workers. Under HAVA, the only permissible requirement that may be imposed upon a would-be voter before permitting that voter to cast a provisional ballot is the affirmation contained in [42 U.S.C.] §15482(a): that the voter is a registered voter in the jurisdiction in which he or she desires to vote, and that the voter is eligible to vote in an election for federal office. Sandusky County Democratic Party, 387 F.3d at 574.

This goes to the very heart of provisional voting. If provisional voting is a right triggered by an election official's determination that an individual has not met a voter eligibility requirement, how

023557

can such a requirement also serve as a bar to that right? The concept of provisional voting works only if the right is always available when the application of voter eligibility requirements is in question.

Second, consistent with the differences in purpose between traditional and provisional ballots, the other major distinction between the two lies in the application of voter eligibility requirements. This difference is primarily one of procedural timing. States have the right to create voter eligibility requirements and these requirements must be applied to both traditional and provisional ballots. In casting a traditional ballot, one must meet all eligibility requirements prior to receiving the ballot. However, in the provisional process, the potential voter has already failed to meet these preliminary requirements and the application of State law must occur after the ballot has been received. State voter eligibility requirements should be applied after the provisional ballot and/or supporting affirmation has been transmitted pursuant to Section 302(a)(3) of HAVA. Provisional ballots are counted as votes only after election officials have determined that the individual can meet voter eligibility standards consistent with state law. Again, the purpose of the process is to allow election officials more time, so that they may have more perfect information when making a decision about voter eligibility. Provisional ballots are subject to the full effect of State law regarding the eligibility to vote and the opportunity the law provides provisional voters to supply additional information. Provisional ballots do not escape state or federal voter eligibility requirements, those provisional ballots that do not meet State standards will not be counted.

Provisional Voting Under HAVA Section 303(b). Congress provided an example of how provisional voting works by applying the right to a specific circumstance. Section 303(b)(2)(B) of HAVA, entitled *Fail-Safe Voting*, provides that when a first-time voter who registered by mail is required by HAVA Section 303(b) to show identification, that person must be given a provisional ballot if he or she fails to provide such identification at the polling place. This section is important as it clarifies Congressional intent regarding how provisional voting should function.

The *Fail-Safe Voting* provision of Section 303(b)(2)(B) grants clear insight into how provisional voting should be implemented. While Section 303(b) deals with a specific subset of voters (first-time voters who registered by mail), its application of Section 302(a) supports the concept that a provisional ballot must be given to a voter who is determined (at the polling place) not to meet voter identification requirements. A review of the section shows that in the one area where HAVA set a Federal voter identification requirement Congress made clear that an individual's failure to meet this eligibility requirement triggered the statute's provisional voting section. Congress saw no difference between an individual's failure to meet the voter identification requirements it issued in Section 303(b) and the failure to meet eligibility requirements which trigger provisional voting under Section 302. Section 303(b) makes it clear that Congress did not intend voter identification requirements to limit access to provisional voting. Instead, Congress viewed provisional voting as a right, or more specifically, as a fail-safe. The EAC strongly believes that HAVA provisions must be interpreted to bring about consistent and evenly applied results. In this case, if individuals who fail to meet Federal identification standards have the right to a provisional ballot, so must individuals who fail to meet similar State standards.

Stricter Eligibility Standards and Provisional Voting. HAVA specifically provides that States may create stricter voter eligibility standards than provided in HAVA.³ Arizona's "Proposition 200" identification requirements are a prime example of this authority. However, the HAVA authority to create stricter eligibility standards does not grant the state authority to create standards that bar access to a provisional ballot. To interpret HAVA otherwise (i.e. allowing stricter state identification standards to bar access to provisional ballots) would render HAVA's provisional voting mandate (Section 302) void and meaningless. HAVA cannot be read to grant both (1) the right to a provisional ballot if an individual's voting eligibility is challenged by a State and, (2) the right of that State to deny an individual a provisional ballot if they do not meet voter eligibility standards. These concepts are mutually exclusive. HAVA cannot be interpreted to allow a State to create voter eligibility standards that bar the Section 302 right to cast a provisional ballot without nullifying the effect and intent of that provision. Any such interpretation of HAVA would run afoul of both HAVA Section 304 and longstanding principles of statutory construction.

First, HAVA notes in Section 304 that while States may create standards that are stricter than those established under HAVA, this authority is limited to the extent "such State requirements are not inconsistent with the Federal requirements under [HAVA]." Clearly, provisional voting is a requirement under HAVA. Section 302(a) notes that qualified individuals "**shall be permitted to cast a provisional ballot.**" (Emphasis added). In this way, States may not create standards that are inconsistent or interfere with the provisional voting mandate.

Furthermore, long established principles of statutory construction further prohibit an interpretation of HAVA that would render any of its provisions meaningless. It is "'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" TRW Inc. v. Andrews, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001), (quoting Duncan v. Walker, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)).

A Stricter Provisional Voting Standard. As discussed above, States' have the right to impose stricter requirements than those laid out in HAVA. The EAC has already made it clear, above, that a stricter voter eligibility requirement cannot be read to bar an individual's right to a provisional ballot. However, could a stricter requirement regarding provisional voting serve to limit access to such ballots? No. A stricter State requirement for provisional voting would be a standard that enhances a person's access to a provisional ballot. As the Sixth Circuit noted, "HAVA is quintessentially about being able to cast a provisional ballot." Sandusky County Democratic Party, 387 F.3d at 576. "HAVA's requirements 'are minimum requirements' permitting deviation from its provisions provided that such deviation is 'more strict than the requirements established under' HAVA (**in terms of encouraging provisional voting**)...." *Id.*, (quoting 42 U.S.C. §15484, emphasis added). Thus, in terms of provisional voting, a stricter standard is one that serves to further encourage provisional voting. When passing laws affecting provisional voting, States must ensure that their provisions are consistent with HAVA or otherwise serve to further an individual's access to a provisional ballot. EAC concludes that any policy asserting that States may pass laws limiting access to provisional ballots conflicts with HAVA.

³ See 42 U.S.C. §§15485 – 15485, entitled *Minimum Requirements and Methods of Implementation Left to Discretion of State*, respectively.

023559

Conclusion. A state may not impose an identification requirement that would limit a potential voter's access to and submission of a provisional ballot. However, such requirements (when coupled with a state's provisional ballot procedures) may prevent a provisional ballot from being counted.

Gracia Hillman
Chair

Paul DeGregario
Vice Chairman

Ray Martinez III
Commissioner

Donetta Davidson
Commissioner

023560



U.S. Election Assistance Commission
1225 New York Ave. – Suite 1100
Washington, DC 20005

On September 13, 2005 the U.S. Election Assistance Commission issued an advisory (2005-006) and, after consideration of the matter EAC concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event his or her name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot.

The right to cast a provisional ballot is created in Section 302 of HAVA. Pursuant to HAVA, when an individual declares that he or she is a registered and eligible voter in a federal election, that individual "shall be permitted to cast a provisional ballot" if (1) their name does not appear on the official list of eligible voters or (2) "an election official asserts that the individual is not eligible to vote." (Section 302(a)). This right to receive a provisional ballot is contingent upon only one thing (per Section 302(a)(2)), the individual's execution of a written affirmation that he or she is both a registered and eligible voter for the election at issue.¹

In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

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First, the nature and purpose of traditional and provisional ballots are essentially different. The purpose of a traditional ballot is to allow a confirmed, eligible voter to cast a vote. The purpose of a provisional ballot is to allow individuals whose voter eligibility is challenged to reserve the right to vote by memorializing both their intent to vote and their proposed vote. This is

¹ Moreover, a potential voter determined not to be eligible must be informed of their provisional voting rights per Section 302(a)(1) of HAVA.

023561

evident by the HAVA processes discussed above. The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has been determined by the State. Hence, the moment it is cast, it becomes an individual's vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right.

This goes to the very heart of provisional voting. If provisional voting is a right triggered by an election official's determination that an individual has not met a voter eligibility requirement, how can such a requirement also serve as a bar to that right? The concept of provisional voting works only if the right is always available when the application of voter eligibility requirements is in question.

Section 303(b)(2)(B) of HAVA, entitled *Fail-Safe Voting*, provides that when a first-time voter who registered by mail is required by HAVA Section 303(b) to show identification, that person must be given a provisional ballot if he or she fails to provide such identification at the polling place. This section is important as it clarifies Congressional intent regarding how provisional voting should function.

The *Fail-Safe Voting* provision of Section 303(b)(2)(B) grants clear insight into how provisional voting should be implemented. While Section 303(b) deals with a specific subset of voters (first-time voters who registered by mail), its application of Section 302(a) supports the concept that a provisional ballot must be given to a voter who is determined (at the polling place) not to meet voter identification requirements. Congress saw no difference between an individual's failure to meet the voter identification requirements it issued in Section 303(b) and the failure to meet eligibility requirements which trigger provisional voting under Section 302. Section 303(b) makes it clear that Congress did not intend voter identification requirements to limit access to provisional voting. Instead, Congress viewed provisional voting as a right, or more specifically, as a fail-safe. The EAC strongly believes that HAVA provisions must be interpreted to bring about consistent and evenly applied results. In this case, if individuals who fail to meet Federal identification standards have the right to a provisional ballot, so must individuals who fail to meet similar State standards.

First, HAVA notes in Section 304 that while States may create standards that are stricter than those established under HAVA, this authority is limited to the extent "such State requirements are not inconsistent with the Federal requirements under [HAVA]." Clearly, provisional voting is a requirement under HAVA. Section 302(a) notes that qualified individuals "**shall** be permitted to cast a provisional ballot." (Emphasis added). In this way, States may not create standards that are inconsistent or interfere with the provisional voting mandate.

States' have the right to impose stricter requirements than those laid out in HAVA. The EAC has already made it clear, above, that a stricter voter eligibility requirement cannot be read to bar an individual's right to a provisional ballot. However, could a stricter requirement regarding provisional voting serve to limit access to such ballots? No. A stricter State requirement for provisional voting would be a standard that enhances a person's access to a provisional ballot. A state may not impose an identification requirement that would limit a potential voter's access to and submission of a provisional ballot. However, such requirements (when coupled with a state's provisional ballot procedures) may prevent a provisional ballot from being counted.

BACKGROUND

On September 13, 2005 the U.S. Election Assistance Commission issued an advisory (2005-006) and, after consideration of the matter, EAC concluded that Section 302 of HAVA creates a voter right. Specifically, the section creates the right for a potential voter to utilize a provisional ballot in the event his or her name does not appear on the registration list or the voter's eligibility is challenged by an election official. While States may create voter identification standards that exceed those laid out in HAVA and effect whether a provisional ballot is counted, States may not take action that limits a voter's right to receive and submit a provisional ballot.

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In simplest terms, provisional voting represents the right of an individual (whose eligibility to vote has been challenged), to reserve his or her right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. A provisional ballot does not represent a different way to vote, nor does it serve as a bypass to State laws governing voter eligibility. Rather, it is designed to prevent an individual from losing his or her right to vote due to the fact that a poll worker did not have all the information available or needed to accurately assess voter eligibility. Thus, based upon the plain language of Section 302(a) of HAVA, a challenge to an individual's eligibility to vote (such as a challenge based upon identification requirements) cannot serve as a bar to the receipt of a provisional ballot, because it is the election official's challenge that triggers the provisional ballot procedure in the first place. To hold otherwise would defeat the purpose of provisional voting. In the end, to understand this concept one must understand the differences between traditional and provisional ballots.

The nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot. Because of this fact, the two processes must be treated differently. While voter identification requirements may serve as a bar to the casting of a traditional ballot, they may not prevent the submission of a provisional ballot.

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023564

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023565

OVERVIEW OF RECOMMENDATIONS FOR SUCCESSFUL PRACTICES

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

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

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

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

SUMMARY OF RECOMMENDATIONS FOR Sound PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful.

Among those questions are:

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PCL XL error

Subsystem: KERNEL

Error: IllegalOperatorSequence

Operator: SetPageScale

Position: 1528

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023569

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

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

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

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

SUMMARY OF RECOMMENDATIONS FOR Sound PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2008 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

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PCL XL error

Subsystem: KERNEL

Error: IllegalOperatorSequence

Operator: SetPageScale

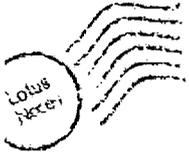
Position: 1528

023571



Peter Schulleri/EAC/GOV
08/29/2006 12:57 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject ATTACHED: USEAC Guidance on Provisional Voting_Final
- version 1



Peter Schulleri/EAC/GOV
08/29/2006 11:54 AM

To Amie J. Sherrill/EAC/GOV
cc
Subject ATTACHED: USEAC Guidance on Provisional Voting_Final
- version 1 

Hello,

Respectfully,



Peter Schulleri USEAC Guidance on Provisional Voting_Final-v1.doc
Contract Specialist
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
Tel: 202-566-3100
Fax: 202-566-3127

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023572



U.S. Election Assistance Commission
1225 New York Ave. – Suite 1100
Washington, DC 20005

U.S. Election Assistance Commission **Guidance on Provisional Voting**

Provisional voting can be defined as the right of an individual voter to reserve their right to vote and postpone the voter eligibility determination to a time when more perfect or complete information may be provided. The idea behind a provisional ballot is to maintain the person's intent to vote and their proposed vote until such time as it is determined that they do or do not have the right to cast a ballot in that area. The Help America Vote Act (HAVA) provides definitive protection of a person's right to receive a provisional ballot. Section 302 of HAVA mandates that in the event a person does not appear on the registration list or their eligibility is challenged by an election official the person shall be given a provisional ballot as long as they are willing to declare that: 1) he/she is a registered voter and 2) he/she is eligible to vote in the election at issue. If a voter will declare these two things in the form of a written affirmation then HAVA mandates that the voter must be given a chance to cast a provisional ballot. This means that States still maintain complete control over voter identification requirements and determination of which provisional ballots meet those ID requirements. However, before making the determination of whether a voter has the right to cast a ballot at that polling place or not, the State and local officials must first offer the person a provisional ballot in order to protect that person's right to vote. This means that a provisional ballot is neither a means to avoid State imposed voter eligibility requirements nor a vote itself. State voter eligibility requirements are applied and provisional ballots are subject to the full effect of State law regarding voter eligibility. However, States may not refuse to offer a provisional ballot to a voter who's right to vote is being challenged. To refuse to give a provisional ballot to such a voter would defeat the primary purpose of HAVA which has been stated as "...to prevent on-the-spot denials of provisional ballots to voters deemed ineligible by poll workers."

Because much of the decision making as to provisional balloting is left up to the States many different approaches have been adopted. For instance in some States a voter can cast a provisional ballot in any precinct in the State regardless of where they are registered, where as in other States provisional ballots are only counted if they are cast in the precinct or county in which the voter was eligible to vote. The key is a consistent approach within the state so that all voters are treated the same. Also, many States choose to use the information provided on the provisional ballot to help register the voter for the next election. This takes advantage of the provisional voting system by preventing the same registration issues from arising in the next election. The most important thing to remember is provisional balloting was created in order to allow the greatest number of people the opportunity to vote. By so doing provisional balloting represents a positive step by the states to prevent the disenfranchisement of voters. It allows the voter a final opportunity to cast a vote even if their eligibility is in question. Where once a voter would not have been given a chance to vote thanks to a provisional ballot that right is maintained. Given the mandate by HAVA to offer a provisional ballot the following information is intended to guide States in the administration of the provisional balloting process and offer good practices in State's approach to provisional balloting.

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BACKGROUND

There is wide variation in the implementation of provisional voting among and even within states. Nonetheless, recommendations for good or at least better practices based on the experience gained in the 2004 election can be useful in states' efforts to implement provisional voting policies and procedures that are fair, transparent and effective.

Every provisional ballot counted represents a voter who should have been able to vote by regular ballot. And while statewide registration databases are likely to reduce the use of provisional ballots, such databases are not likely to make this difference for those who did not bring required identification documents to the polling place. The statewide voter registration database will facilitate verifying that a person is registered but the voter will still have to vote provisionally. Provisional voting will remain an important failsafe method of voting, and voters should have confidence that the failsafe will operate correctly.

The EAC recommends that all States strive for best practices in provisional voting.

OVERVIEW OF RECOMMENDATIONS FOR SOUND PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending certain practices, the EAC offers informed advice while respecting diversity among the states.

Take a quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending that:

- Each state collect data systematically on the provisional voting process to permit consistent evaluation of its procedures and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate provisional ballots by jurisdiction.

Self-evaluation of Provisional Voting - 4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently structured to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?

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3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative requirements of the system reasonable given the staff and other resource requirements available?
4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

Court decisions suggest areas for action

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots and provide training for the officials who will apply those standards. Clear direction by regulation or statute on what records to use in evaluating provisional ballots could save time and effort and increase the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by administrative errors at the polling place.
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.

Assess each stage of the provisional voting process

Beyond the procedures suggested by court decisions, states should assess each stage of the provisional voting process. They can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process.

Avoiding error at the polling place will allow more voters to cast a regular ballot and all others who request it to cast a provisional ballot. Our recommendations for practices to help avoid error at the polling place include:

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.

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- Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. Good practice for states should include guidelines to estimate the supply of provisional ballots needed at each polling place.
- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- Research shows more provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA leaves this decision up to the states, EAC notes the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding whether or not to count the ballot. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. Also, tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.
- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While a good practice might be for poll workers to direct the voter to the correct precinct, poll workers' advice is not always correct and the voter should be protected against administrative error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating of a provisional ballot (see below).

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College.

- A good practice is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- A good practice is for the states to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

SUCCESSFUL PRACTICES FOR EACH STEP IN THE PROCESS

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system cause most voters to end up casting provisional ballots. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

EAC has examined each step of the provisional voting process to identify specific areas where the states should focus their attention. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

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Step 1. Registration and Pre-Election Information for Voters

Providing clear and accurate information to voters before the election is important to the success of the provisional voting process. The more voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and by considering what information might be added to sample ballots mailed to voters before elections. Good practices in this area would include:

- If states require identification at the time of registration, the kind of ID required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."
- The process to re-enfranchise felons should be clear and straightforward.
- State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

Step 2. At the Polling Place

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

- The layout and staffing of the polling place, particularly the multi-precinct polling place, are important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
- Voters should be able to find out why their provisional ballot wasn't counted. Voters should be given printed information explaining how to check to see if their ballot was counted. Because provisional ballots offer a fail-safe method of voting, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1 % of the voters in the district, Delaware at 6%. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
- To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain of custody requirements for clarity.

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Step 3. Evaluating Voter Eligibility and Counting Provisional Ballots

State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. There may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot:

- A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. At least 11 states allow voters to provide ID or other information one to 13 days after voting.
- The signature match will also be able to be compared with motor vehicle records and other databases which are available to counties.
- More provisional ballots are counted in those states that verify ballots cast outside the correct precinct. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the district and local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
- Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot counts so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Ideally the voter would be directed to the correct precinct, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match"; "wrong precinct," etc.). Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

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

| | |
|-----|--|
| RFS | (Rejection federal or state) No federal or state candidates or issues to duplicate. |
| RNS | (Rejection not signed) Provisional Ballot Affidavit not signed. |
| RIN | (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility. |
| RNR | (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S. |
| REE | (Rejection envelope empty) Provisional ballot envelope is empty. |
| RAB | (Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot. |
| REV | (Rejection based on ballot cast in early voting) Voter voted early. |
| RIP | (Rejection based on incorrect party) Incorrect Party in Primary Election. |
| RFE | (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole. |

023578

- RWC (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
- RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as ID deficient, and did not provide ID at the time of voting.
- RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

Step 4. Verification of Provisional Ballots

States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.

- In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in a presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time for challenges.
- If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. States may want to provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election.

States should make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

Step 5. Post-election Information for Voters

Timely information to voters about the disposition of their provisional ballot will allow challenges filed by the provisional voter to be completed in a timely manner to ensure that the vote is counted for the elections in which the ballot was cast before the elections are certified.

- States should establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered. In some states the act of casting a provisional ballot can capture the voters contact information and allow them to be registered from that time forward for future elections.

Step 6. State Laws Governing Litigation over Provisional Voting

- States should prominently post and widely distribute Provisional Voting and Administrative Complaint procedures before, during, and after each election to ensure that voters know their provisional voting rights and what they should do if they believe their right to vote was denied.
- States should establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot.

Broader Considerations

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes.

- State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
- State laws or regulation should require an evaluation process for provisional ballots while protecting the names of those who voted provisionally.
- Defining what makes for a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes. Nor is the system with the greatest number counted or with the fewest counted necessarily better because the evaluation process could be flawed.
- Variations in state law can make it difficult in defining what makes for a successful provisional voting system. There must be equal consideration for all voters.

CONCLUSION

The EAC recommends that states take the following action:

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

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

OVERVIEW OF RECOMMENDATIONS FOR SUCCESSFUL PRACTICES

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

Self-evaluation of Provisional Voting -4 Key Questions

The first step to achieving greater consistency within each state is to think about provisional voting systematically. As legislators, election officials, and citizens in the states prepare for the 2006 election, they should ask themselves these questions about their provisional voting systems.

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

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

SUMMARY OF RECOMMENDATIONS FOR Sound PRACTICES

State efforts to improve the provisional voting process have been underway since the 2004 election. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states.

Take a Quality-improvement approach

Defining what constitutes a successful provisional voting system is difficult. Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. A first step is for states to recognize that improving quality begins with seeing the provisional voting process as a system and taking a systems approach to regular evaluation through standardized metrics with explicit goals for performance. EAC can facilitate action by the states by recommending as a best practice that:

- Each state collect data systematically on the provisional voting process to permit evaluation of its voting system and assess changes from one election to the next. The data collected should include: provisional votes cast and counted by county; reasons why provisional ballots were not counted, measures of variance among jurisdictions, and time required to evaluate ballots by jurisdiction

Emphasize the importance of clarity

Above all else, the EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. As state legislators and election officials prepare for the 2006 election, answers to the questions listed in the recommendations section of this report could be helpful. Among those questions are:

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than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.

- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. Our research did not identify an optimum division of the five weeks available.

- The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

After the election, timely information to voters about the disposition of their provisional ballot can enable voters to determine if they are registered for future elections and, if not, what they need to do to become registered.

- Best practice for the states is to establish mechanisms to ensure that voters casting provisional ballots are informed whether they are now registered for future elections and, if not, what they need to do to become registered.

Final observation

The detailed examination of each stage in the provisional voting process can lay the foundation each state needs to improve its system. Efforts to improve provisional voting may be most effective as part of a broader effort by state and local election officials to strengthen their systems. Collecting and analyzing data about those systems will enable states to identify which aspects of the registration and electoral system are most important in shunting voters into the provisional ballot process. Responsible officials can then look to their registration system, identification requirements or poll worker training as ways to reduce the need for voters to cast their ballots provisionally.

023583

Best Practices For Each Step In The Process

We examined each step of the provisional voting process to identify specific areas where the states should focus their attention to reduce the inconsistencies noted in our analysis. We offer recommendations in each area appropriate to the responsibilities that HAVA assigns the EAC for the proper functioning of the provisional voting process.

The Importance of Clarity

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots ... To avoid post election disputes over provisional ballots--disputes that will diminish public confidence in the accuracy and legitimacy of the result-- well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."²⁶

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.²⁷ Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.²⁸
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. ²⁹ Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

²⁶ The Century Foundation, *Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms*, July 2005.

²⁷ See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004) ²⁸ See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005). See also Order, *Hawkins v. Blunt*, NO.04-4177-CV-CRED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

²⁹ *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6th Cir. 2004)

023364

workers may need appropriate training to understand their duty to give such voters a provisional ballot. 30

A. Registration and Pre-Election Information for Voters

Providing crisp, clear information to voters before the election is important to the success of the provisional voting process. The better voters understand their rights and obligations, the easier the system will be to manage, and the more legitimate the appearance of the process. States can begin by assessing the utility and clarity of the information for voters on their websites and

by considering what information might be added to sample ballots mailed to voters before elections. Best practices in this area would include:

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."³¹
2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.³²
3. State or county websites for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

B. At the Polling Place

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.³³ Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."³⁴ A state

³⁰ *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

³¹ Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina) they can verify their registration on the website. ³² The Century Foundation, op. cit.

³³ Colo. Code Regs. § 1505-

1, Rule 7.1. ³⁴ 2005 N.M. Laws

270 page no. 4-5.

- statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
 3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required ... to photocopy official provisional ballots."³⁵ At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1 % of the voters in the district, Delaware at 6%.³⁶ States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
 4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. Public recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underlines the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."³⁷ Nonetheless, the *Panio v. Sutherland*³⁸ decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

³⁵ Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

³⁶ Connecticut: "Equal to or not less than 1 % of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del. Code Ann. Tit 15 § 4948(e).

³⁷ The Century Foundation, op. cit.

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

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified 10 or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the 10 may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks 10 on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with 10 rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide 10 or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their 10 by electronic means or by mail, as well as in person.³⁹
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.⁴⁰ While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.⁴¹ Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

³⁹ In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia-no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Compo Stat. Ann. 5/18A-15(d); Indiana- in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (I); Maryland-until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey- until the close of business on the second day after the election 19:53C-3(i). Nevada- until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico-until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

⁴⁰ See Andersen, *op. cit.*, pgs. 23 - 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

⁴¹ Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.⁴²

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

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

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

⁴² CCR 1505-1, at 26.5.4, adopted August 4, 2005. See also 1-2-509(3) C.R.S.

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma⁴³ or the Baldrige Quality

⁴³ Six Sigma is a measure of quality that strives for near perfection. Six Sigma is a disciplined, data-driven approach and methodology for eliminating defects (driving towards six standard deviations between the mean and the nearest specification limit) in any process -- from manufacturing to transactional and from product to service.

process 44 to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

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

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

44 The Baldrige Criteria for Performance Excellence provide a systems perspective for understanding performance management. They reflect validated, leading-edge management practices against which an organization can measure itself. With their acceptance nationally and internationally as the model for performance excellence, the Criteria represent a common language for communication among organizations for sharing best practices. The Criteria are also the basis for the Malcolm Baldrige National Quality Award process.

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

November 23, 2005

Submitted by

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

The Moritz College of Law, The Ohio State University

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FINAL DRAFT

11/23/2005

Executive Summary

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

Background of the Research

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

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

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

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

¹ Appendix 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures and describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

² The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See www.electioncenter.org.

³ The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6th Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

FINAL DRAFT

11/23/2005

- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots. (The average of provisional ballots cast was 64.5% counted. A third category had to account for a significant amount over 64.5%. What was that category?)
- Perhaps another reason provisional ballots must be cast in the correct precinct in order to be counted is that local races are also important and that allowing provisional ballots to be counted by voters who cast them outside of the precinct and only counting the ballots for the upper ballot races for outside of the precinct can disenfranchise voters from participating in local races. This argument has been used by many legislatures and in court cases to require that provisional ballots must be cast in the correct precinct in order to be counted.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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

- Be prepared to direct voters to their correct precincts with maps;
- Regard provisional voting as easy to implement;
- Report that provisional voting sped up and improved polling place operations
- Conclude that the provisional voting process helped officials maintain accurate registration databases.

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

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

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

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

FINAL DRAFT

11/23/2005

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

This section needs a mention of the VR databases

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

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Variation With-in States

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

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

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

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

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

FINAL DRAFT

11/23/2005

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

Effectiveness of Provisional Voting

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

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

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

Estimates of Votes Lost In 2000 Presidential Election

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

Table 1 Cal Tech - MIT Voting Technology Project Estimates

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

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

FINAL DRAFT

11/23/2005

This litigation was significant nonetheless.

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

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

Need for Promulgation of Best Practices

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

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

Recommendations for Best Practices

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

FINAL DRAFT

11/23/2005

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

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

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

A. Registration and Pre-Election Information for Voters

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

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

²⁰ See *Washington State Republican Party v. King County Division of Records*, 103 P.3d 725, 727-728 (Wash. 2004)

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

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

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

FINAL DRAFT

11/23/2005

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

C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

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

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

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

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

³¹ The Century Foundation, op. cit.

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

FINAL DRAFT

11/23/2005

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

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

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

D. Verification of Provisional Ballots

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

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

FINAL DRAFT

11/23/2005

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

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

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

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

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

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

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

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

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

FINAL DRAFT

11/23/2005

Please note that:

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

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

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

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

FINAL DRAFT

11/23/2005

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

Statewide List of Registered Voters

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

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

FINAL DRAFT

11/23/2005

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

Voter Identification

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

³⁹ This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>
⁴⁰ In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

023603

FINAL DRAFT

11/23/2005

Table 5

CATEGORIZATION OF STATES -- Ballot Evaluation Methods

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

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

Data Collection

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

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

FINAL DRAFT

11/23/2005

Data Differences

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

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

023605

ATTACHMENT 2 – Data

Table 1 -- Provisional Voting Basic Statistics

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

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

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

023606

Table 2 -- Characteristics of State Provisional Voting Systems

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

023607

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

* Data to come on timeline classifications for these remaining states.



023610

Table 3 -- Information for Voters

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

023611

Table 4 -- Litigation and Statues

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

023612

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

023613

Aletha
Barrington/CONTRACTOR/EA
C/GOV

05/04/2006 04:36 PM

To [REDACTED]
cc Karen Lynn-Dyson/EAC/GOV@EAC

bcc

Subject Conference Call/ Eagleton Institute

Good afternoon everyone,

This is to inform you of a time set-up for the conference call on May 11, 2006 regarding Eagleton Institute/Voter Identification Research Project: it will be at 11:30 am, if everyone is available for this time then its a go, if not please contact me at your earliest convenience.

Thanks!

Aletha Barrington
Contracts Assistant
U.S. Election Assistance Commission
(202) 566-2209 (office)
(202) 566-3128 (fax)

023614



"Adam Berinsky"

05/03/2006 05:31 PM

To [REDACTED]

cc

bcc

Subject Re: Review of EAC research on Voter Identification

History:

This message has been replied to

I just got your phone message. I will still do the review, but I should note that I won't be able to do a full 90 minute phone call on the 11th -- perhaps we could schedule 30 minutes or so for me to be on the phone call.

At 05:36 PM 5/1/2006, you wrote:

Dr. Berinsky-

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While we are unable to offer financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

023615

Sincerely,

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

Adam J. Berinsky
Associate Professor
Department of Political Science
Massachusetts Institute of Technology
77 Massachusetts Avenue
Cambridge, MA 02139 E53-459
Tel: (617) 253-8190
Fax: (617) 258-6164
E-mail: berinsky@mit.edu

Web Page: <http://web.mit.edu/berinsky/www/>

023610



"Tom O'Neill"

05/03/2006 03:29 PM

To

cc

bcc

Subject May 11 teleconference

Karen,

Do you have a time for the May 11 teleconference? We're working to arrange the participation of members of our Peer Review Group and that is the key missing piece of information.

Thanks,

Tom O'Neill

023617

Juliet E.
Thompson-Hodgkins/EAC/GO
V

05/01/2006 04:49 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: E-mail to Voter ID peer reviewers

I am concerned about the statement that EAC policy precludes us paying them. It is an issue of correctly soliciting and entering into a contract for the procurement of services. Perhaps there is a better way to phrase this, or is it even necessary

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

05/01/2006 02:58 PM

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

cc

Subject E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

023618

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

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

023619

Thomas R. Wilkey/EAC/GOV
05/01/2006 04:07 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc
bcc
Subject Re: E-mail to Voter ID peer reviewers

Then we are good to good

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 03:03 PM
To: Thomas Wilkey
Cc: Juliet Thompson-Hodgkins
Subject: Re: E-mail to Voter ID peer reviewers

It's my understanding that Julie thinks we are "good to go" as long as we don't pay them.

Correct?

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

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV
cc
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 05/01/2006 02:58 PM
To: Thomas Wilkey; Juliet Thompson-Hodgkins
Subject: E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

023670

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler
Dear Jan Leighley
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

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- The specific statistical applications which were used to analyze the data and arrive at various conclusions

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While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

023671