



"Tom O'Neill"
[REDACTED]
07/12/2005 07:17 PM

To cpaquette@eac.gov
cc ireed@rutgers.edu, john.weingart@rutgers.edu,
klynndyson@eac.gov, lauracw@columbus.rr.com,
foley.33@osu.edu, rmandel@rci.rutgers.edu
bcc

Subject RE: Peer Review Group

History:  This message has been replied to.

Carol,

I sent you the email on the Peer Review Group because you asked me to. When we discussed the issue in New York, you told me to send to you in writing our response to the Commission's suggestions for a new, more elaborate review process. I believe I copied Karen on that email.

Learning now, almost a week later, that you have taken no action is disheartening. As you know, our schedule is tight, and we need the counsel the Peer Review Group can provide. I hope, therefore, that Karen will take immediate action to resolve the situation so we can begin to recruit the review group in time to assure the quality of the resource design.

Tom O'Neill

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

From: cpaquette@eac.gov [mailto:cpaquette@eac.gov]
Sent: Tuesday, July 12, 2005 6:37 PM
To: klynndyson@eac.gov
Cc: Foley, Ned; reed, ingrid; Weingart, John; Laura Williams; Mandel, Ruth; Tom O'Neill
Subject: Re: Peer Review Group

Karen, Tom -

I am not taking any action on the email Tom sent a few days ago regarding the Peer Review Group because the Eagleton project is not my responsibility. As I indicated earlier to Karen, I didn't know why this was sent to me since Karen is the Project Manager. I endorse her comment below regarding the need for including her in all correspondence with anyone at the EAC regarding the project.

When I was the Interim Executive Director it was part of my job to stay on top of all EAC project work. I now have other responsibilities at the EAC, and while I am happy to continue involvement in other projects for continuity and transition purposes as needed, that needs to be very limited. My involvement with the Eagleton work has only been from the contracting perspective, and that is the only continuing role I have. Any substantive project activities have to be taken up with

024022

Karen.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov

Karen
Lynn-Dyson/EAC/G

OV

To: Tom O'Neill <tom_oneill@verizon.net> @GSAEXTERNAL
"Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid"
07/12/2005 05:08 CC: <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams"
PM <lauracw@columbus.rr.com>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>

Subject: Re: Peer Review Group [Link](#)

Tom-

I trust you are in contact with Carol and Julie regarding the information on the Peer Review Group and the July 28 hearing at Cal/Tech that you have requested of them, respectively.

While the EAC is a small agency with relatively few reporting layers, I suggest that for all future items requiring feedback and decisions from the EAC, that you are certain to carbon copy me on all e-mails.

This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

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

024023

"Tom
O'Neill"
<tom_oneill
@verizon.net>

07/08/2005
03:41 PM

To: "Paquette, Carol" <cpaquette@eac.gov>
cc: "Laura Williams" <lauracw@columbus.rr.com>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klyndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>
Subject: Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG
2. Create a "tiered process" of review in which:
 - A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.

024024

- B. PRG's analysis would be vetted by a defined/select group of local election officials.
- C. A defined/select group of advocacy organizations would review the comments of the local election officials
- D. Empanel a final focus group of local election officials, advocates and academics for an overall, interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least \$30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.) If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

Project Team focuses on analysis and recommendations

Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think

about the Peer Review Group.

In short, the PRG will help ensure that EAC's Guidance Document is founded on a solid base of data and analysis. The review and comment on the Preliminary Guidance Document by the EAC's Board of Advisors and Standards Board will provide participation by important stakeholder groups without the need for the other review committees. This Board is broad-based and represents a key stakeholder group. It also enjoys a significant advantage over a "defined/select" group we might empanel. Any group we define will be open to criticism or charges of bias by representatives of interest groups not represented.

The criticism and charges of bias might be tolerable, but only if we could expect consensus from the "defined/select" group we would appoint. We believe that consensus would be elusive. In empanelling a "defined/select" group, we would naturally look for balance and would appoint members to represent a point of view or an institutional interest. As representatives they would likely feel that they had little choice but to be strong advocates. They would have little incentive to compromise. Our research, as opposed to our policy recommendations, would be better served by the analysis of scholars than by the advocacy of interests.

Policy judgments

We regard the EAC itself as responsible for the policy judgments involved in shaping the Guidance Document. We plan, of course, to respond to the EAC's comments on our preliminary draft, so that the EAC's comments will shape the Preliminary Guidance Document before it is released for public comment. And further revision will follow the public hearing and comments. The EAC and individual Commissioners can always seek comment informally on our analysis or recommendations. That course appears to us preferable to the creation of a new, more elaborate review process.

Carol A. Paquette/EAC/GOV
07/12/2005 06:36 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams"
bcc
Subject Re: Peer Review Group 

Karen, Tom -

I am not taking any action on the email Tom sent a few days ago regarding the Peer Review Group because the Eagleton project is not my responsibility. As I indicated earlier to Karen, I didn't know why this was sent to me since Karen is the Project Manager. I endorse her comment below regarding the need for including her in all correspondence with anyone at the EAC regarding the project.

When I was the Interim Executive Director it was part of my job to stay on top of all EAC project work. I now have other responsibilities at the EAC, and while I am happy to continue involvement in other projects for continuity and transition purposes as needed, that needs to be very limited. My involvement with the Eagleton work has only been from the contracting perspective, and that is the only continuing role I have. Any substantive project activities have to be taken up with Karen.

Carol A. Paquette
U.S. Election Assistance Commission
(202)566-3125 cpaquette@eac.gov
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV
07/12/2005 05:08 PM

To "Tom O'Neill" <tom_oneill@verizon.net>@GSAEXTERNAL
"Paquette, Carol" <cpaquette@eac.gov>, "Foley, Ned" <foley.33@osu.edu>, "reed, ingrid" <ireed@rutgers.edu>, cc "Weingart, John" <john.weingart@rutgers.edu>, "Laura Williams" <lauracw@columbus.rr.com>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>
Subject Re: Peer Review Group 

Tom-

I trust you are in contact with Carol and Julie regarding the information on the Peer Review Group and the July 28 hearing at Cal/Tech that you have requested of them, respectively.

While the EAC is a small agency with relatively few reporting layers, I suggest that for all future items requiring feedback and decisions from the EAC, that you are certain to carbon copy me on all e-mails.

This will ensure, that as your primary point of contact, I have a record of all communication that has taken place between the contractor and the agency.

Thanks

024027

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

"Tom O'Neill"
<tom_oneill@verizon.net>

07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>
cc "Laura Williams" <lauracw@columbus.rr.com>, "Weingart, John" <john.weingart@rutgers.edu>, "reed, ingrid" <ireed@rutgers.edu>, "Mandel, Ruth" <rmandel@rci.rutgers.edu>, "Lynn-Dyson, Karren" <klynndyson@eac.gov>, "Foley, Ned" <foley.33@osu.edu>

Subject Peer Review Group

Carol,

After our discussion in New York, you asked me to put in writing our response to the EAC's suggestions for expanding the number and kinds of groups that would review and comment on our work. I hope after your review of this response, we will be able to quickly recruit a balanced Peer Review Group (PRG) and move ahead as the schedule in our work plan indicates. Attached is a revised list of the members we propose for appointment to the PRG. We will probably not be able to persuade all of them to serve, but the number and range of views included on the proposed list should ensure that the resulting group is well-balanced.

Tom

RESPONSE TO EAC RECOMMENDATIONS FOR ADDITIONAL REVIEW GROUPS

EAC's Recommendations for the PRG

Karen Lynn-Dyson reported this response from the EAC commissioners to our proposal for the composition of the PRG.

1. Not sufficient conservative representation on the PRG
2. Create a "tiered process" of review in which:
 - A. The PRG will prepare a dispassionate analysis of the issues and draw some tentative conclusions.
 - B. PRG's analysis would be vetted by a defined/select group of local election officials.
 - C. A defined/select group of advocacy organizations would review the comments of the local election officials
 - D. Empanel a final focus group of local election officials, advocates and academics for an overall,

024028

interactive reaction to the analysis and recommendations.

Project Team Response

Creating three new committees to the review process to supplement the work of the Peer Review Group (PRG) is possible, but would add at least 8 weeks –and possibly 12 weeks-- to our completion of the guidance document on provisional voting. We believe this delay would risk limiting the value of this project for the 2006 election. In addition, the change would add at least \$30,000 to the cost of our work. (See the attached table showing the possible effect on our work plan, and note the optimistic assumptions such as the ability to hold a hearing the week after Christmas.). If the same groups were to be engaged in reviewing our work on Voter ID, the time for that work would also have to be stretched at a similar increased cost.

This additional cost and the added time might be worthwhile. . . if the new layers of review were to produce a consensus on how to strengthen the research, sharpen the analysis, and increase the relevance of the Guidance Document. Our team concluded, however, that additional review groups were unlikely to achieve these results.

PRG focuses on quality of research

We believe that our research would be strengthened by a balanced Peer Review Group that will focus on the design of the research and our conduct of it. Based on the EAC's recommendation, we have revised the composition of the PRG to include additional, well-recognized authorities in the field whose perspective is generally agreed to be conservative.

The PRG will focus on the strength of the research design and the quality of our analysis, not on the politics of our recommendations for the guidance document. The PRG will critique the research design and suggest how to strengthen it. Members of the group will review the quality of our analysis so that we can fill holes and correct errors before we make policy recommendations to the EAC. The PRG may or may not meet as a group. The likelihood is that most comments will come in writing from individual members, most of whose schedules would not permit attendance at meetings. In any case, the PRG members will not gather around a table to come to consensus on the study's recommendations.

While using the PRG as a forum to reach consensus on the knotty issues involved does not appear practical, the EAC can benefit from the work of other groups in this regard. It is not necessary for this project to duplicate the deliberative processes of the Carter-Baker Commission, the Century Foundation and the Election Center. The EAC itself as well as the project team can get the benefit of these reports without duplicating this "policy evaluation board" structure as part of this contract.

Project Team focuses on analysis and recommendations

Karen reported that the Commissioners believed that the PRG would "prepare a dispassionate analysis of the issues and draw some tentative conclusions." As we see it, the PRG will neither analyze data nor draw conclusions, tentative or otherwise. Its members will review and comment on how the Project Team has designed and carried out the research. Analysis, conclusions and recommendations are the responsibility of the Project Team. We have all seen in the preface to books or articles a sentence or two that read something like this, "The author thanks Mr. X, Ms. Y, and Dr. Z for their review and comment on the manuscript. Their analysis has strengthened the work, but they are in no way responsible for errors or for my conclusions." That is the way we think about the Peer Review Group.

In short, the PRG will help ensure that EAC's Guidance Document is founded on a solid base of data and analysis. The review and comment on the Preliminary Guidance Document by the EAC's Board of Advisors and Standards Board will provide participation by important stakeholder groups without the need for the other review committees. This Board is broad-based and represents a key stakeholder group. It also enjoys a significant advantage over a "defined/select" group we might empanel. Any group we define

will be open to criticism or charges of bias by representatives of interest groups not represented.

The criticism and charges of bias might be tolerable, but only if we could expect consensus from the "defined/select" group we would appoint. We believe that consensus would be elusive. In empanelling a "defined/select" group, we would naturally look for balance and would appoint members to represent a point of view or an institutional interest. As representatives they would likely feel that they had little choice but to be strong advocates. They would have little incentive to compromise. Our research, as opposed to our policy recommendations, would be better served by the analysis of scholars than by the advocacy of interests.

Policy judgments

We regard the EAC itself as responsible for the policy judgments involved in shaping the Guidance Document. We plan, of course, to respond to the EAC's comments on our preliminary draft, so that the EAC's comments will shape the Preliminary Guidance Document before it is released for public comment. And further revision will follow the public hearing and comments. The EAC and individual Commissioners can always seek comment informally on our analysis or recommendations. That course appears to us preferable to the creation of a new, more elaborate review process.



PROPOSED MEMBERS July 6.doc



"Tom O'neill"
<tom_oneill@verizon.net>
03/15/2006 09:21 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu,
bcc

Subject Voter ID Paper --Final Draft

History:

 This message has been replied to and forwarded.

Karen,

Attached is the final draft of the Voter ID paper, with recommendations for the EAC to consider promulgating as best practices. Two appendices are included as part of the draft and a third, the statistical analysis of the effects of different voter ID requirements on turnout, is attached separately to this email.

We look forward to discussing this final draft with you and with the commissioners on April 3. I'll be preparing a Powerpoint presentation for that meeting. Any guidance you can give me later this month on particular questions that briefing should address would be appreciated.

The Moritz-Eagleton team will be meeting next Tuesday at 9:30 a.m.. If you have preliminary comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

Tom O'Neill



ReportFinalDraft.doc

024031

REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

1. Introduction and Report Background

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] 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 voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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.

2. Voter Identification –Background and Approach of the Study

Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The burden of providing required ID documents on the voter may be greater at the polls on Election Day than at the time of registration. The burden of checking ID, even as simple as a signature match, can be much greater on election workers at the polls than on those registering voters. Poll workers may be faced with long lines and limited time. This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.¹ The emphasis here is on Voter ID on Election Day and afterwards as election judges evaluate provisional

¹ As the Carter-Baker Commission noted, photographic ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify identification. Commission on Federal Election Reform, pp 46-47.

FINAL D R A F T

ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

This analysis takes a view of voter ID issues broader than the rather narrow identification requirements in HAVA. Much of the national ferment over voter ID goes beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those casting a ballot for the first time who had not registered in person. The controversy in the states over voter ID stems from the HAVA requirements, goes beyond those requirements, and sets the context for the analysis here.²

Identification is often described as the critical step in protecting the integrity of the ballot, the process that ensures that the potential voter is eligible and permitted to cast a ballot and one ballot only. In fact, ensuring ballot integrity requires a perspective that takes in the entire voting process. Protecting the integrity of the ballot requires more than preventing the ineligible from voting. It also should ensure that all those who are eligible and want to vote can cast a ballot that counts, and that they can effectively cast a ballot for the candidate of their choice. The protection effort must take into account all forms of voting, including absentee ballots, and embrace each step in the process. A voting system that establishes onerous requirements for voters to identify themselves may prevent the ineligible from voting, but it may also prevent the eligible from casting a ballot. If the ID requirements of a ballot protection system block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or forget to bring to the polls the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This analysis does not include consideration of the incidence of vote fraud, the forms that it takes, nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. The EAC has commissioned a separate study of vote fraud and instructed us not to address that issue in this research.

² Harvard Law Review 119:1127. "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA. . . . HAVA makes explicit that it shall not 'be construed to prevent a State from establishing election technology and administration requirements that are more strict than' HAVA itself provides. The states have accepted the invitation. "

FINAL D R A F T

Nonetheless, a broad view of ballot integrity is needed to appreciate the background and context of this narrower study. We explore the inter-relationships between Voter ID requirements and Provisional Voting and estimate the effects of various voter id requirements on turnout and on the casting of provisional ballots.

Voters lacking required ID, or who have ID that does not reflect their current address, may be able to vote only by casting a provisional ballot.³ To the extent that stricter voter ID requirements divert more voters to the provisional ballot, voter ID requirements can put stress on the already pressured management of the polling place. Administering provisional ballots is more expensive than the normal ballot. Scrutiny of ID can create lines at the polling places, lines made longer as voters are diverted to the provisional voting line. Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle that will keep more citizens from the polls. A review of voter identification practices should keep in mind that America's problem may well be that too many people do not vote rather than that a few people may vote more than once.

An evaluation of the effect of different Voter ID regimes will be more effective if based on clear standards --legal, equitable, practical. The standards suggested here can best be described as the set of questions to be asked about Voter ID requirements. We suggest 7 questions that try to measure the most important dimensions of the problem.

- Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?
- How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?⁴
- How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity

³ For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

⁴ See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

FINAL D R A F T

that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?⁵

- How cost-effective is the system? Does it increase the security of the ballot at an affordable cost, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.
- If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?⁶
- Does it comply with the letter and spirit of Voting Rights Act?
- The seventh question is more difficult to measure than those described in the 6 questions outlined above. The Voter ID requirements should have a neutral result on the composition of the qualified electorate. That is, those requirements should not be designed to reduce the turnout of particular groups of voters who may have a propensity to support one party over another. Whatever the requirement may be, all citizens should be able to comply with it easily and at no or minimal cost.

Summary of findings and conclusions

Voter turnout at the state level in 2004 declined where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Including other factors beyond voter id requirements diminishes the influence of voter ID on turnout. But the analysis still offers some support for the hypothesis that as the burden of voter identification

⁵ In New York, in 2004, disparities in training and voting information were made all too apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

⁶ For example, the Carter-Baker Commission accompanied its recommendation for a national voter ID card with a recommendations for an affirmative effort by the states to reach out and register the unregistered, to use the new Voter ID regime as a means to enroll more voters.

FINAL D R A F T

requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.⁷ And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The EAC should consider the following actions to improve understanding of the relationship between voter ID requirements, broadly defined, and the two important goals of ensuring ballot access and ensuring ballot integrity.

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice that before states adopt a change described as increasing ballot security, states should publish an analysis of the number of eligible, potential voters that the new requirement may keep away from the polls or be permitted to cast only a provisional ballot as well as an estimate of the number of ineligible voters who will be prevented from voting.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. The data should be analyzed to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent and should describe the dynamics of voter ID in preserving the security of the ballot?

⁷ Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

FINAL D R A F T

- Useful information could be supplied by exit polling. It would identify those who had cast a provisional ballot and ask why they were unable to cast a regular ballot. Answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
- Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter id requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three criteria: the convenience of the voter, the total time allowed to evaluate ballots⁸, and the safe harbor provision in presidential elections.

⁸ Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

FINAL D R A F T

3. Voter ID and Turnout

As of the 2004 election, the states and the District of Columbia could be divided into 5 different Voter ID regimes. These are shown in Table 1, *Voter ID Requirements*. Nine states required that voters give their names; 14 that they sign their names; 8 match the signature to a sample in the registration book; 15 require some form of ID (ranging from a utility bill to a government-issued photo ID), and 5 states in 2004 required a photo ID, although in all those states voters without that credential could cast a regular ballot after signing an affidavit concerning their identity and eligibility.

TABLE 1 -- Voter ID Requirements

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later

FINAL D R A F T

New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Match Sig.	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID*****	Provide ID	Bring ID Later
Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

^In Florida and Louisiana, states that required a photo id in 2004, voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

^^In these states in 2004, voters lacking a photo ID could vote by providing other ID.

*Arizona voters who lack a photo ID may present 2 forms of ID with no photograph, such as 2 utility bills.

**State only requires ID for first-time voters who register by mail without providing ID. They accept all forms of ID listed in the statute.

***Georgia is currently enjoined from implementing this law, returning them for the time being to their 2004 requirement of provide ID.

****Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

*****Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compare to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with registration.

*****Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

In 9 states, voters were required merely to state their names so that poll workers could locate them in the registration book. In 14 states, voters signed their names. In 8 states, voters' signatures were matched with a specimen signature. In 15 states voters had to show some form of ID, not necessarily an official picture ID. And in 5 states, voters were required to show an official photo ID, although in 2004 voters who lacked a picture ID could execute an affidavit and vote a regular ballot.

FINAL D R A F T

This neat assignment of each state to one of a few categories may fail to reflect actual practice at a polling place. Like any system run by fallible people it is subject to wide variation in practice. Voters may be confronted with demands for identification at variance with state statutes or legislation. Other voters may be waved through the process without a look at any document, no matter what the regulations may say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters may encounter.

It is not practical to attempt to capture the wide variety of how voter ID requirements may be actually implemented across the nation's tens of thousands of polling places. Recognizing that means that the analysis of the effect of state requirements on county-level turnout must be viewed with some caution.

Effect of Voter ID requirements on Turnout

Summary of Findings and Conclusions

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau.⁹

Voter turnout at the state level in 2004 varied based on voter identification requirements. An average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. Other factors, of course, also influence turnout. Taking those other factors into account in the county-level analysis makes the effect of the voter ID requirement less dramatic. But the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or of people living below the poverty line.

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each

⁹ See Appendix ___ for the full report on voter ID and turnout.

FINAL D R A F T

level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

Future policy decisions should consider the tradeoffs between the incidence of vote fraud that can be prevented by stricter voter ID requirements and the number of eligible voters who will be kept from the polls by those stricter ID requirements. Continuing research is needed to provide the information to inform this calculation of benefits and costs.

Methods and Findings

We classified each state as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (9 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (8 states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (5 states). We then tested the assumption that voter identification requirements would prove to be increasingly demanding on the voter, with providing photo ID the most rigorous. a form of identification, and providing a form of photo identification.

The analysis recognized that election laws in numerous states offer exceptions to these requirements if a prospective voter lacked the ID. Laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot. We therefore also categorized states based on the minimum requirement for voting with a regular ballot. None of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

FINAL D R A F T

Voter turnout at the state level in 2004 declined as voter identification requirements became more demanding, as shown in Table 2. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. Using the maximum requirements as the independent variable, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when using the minimum requirements as the independent variable. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters.

Table 2 – 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 (All States)	59.6 %		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political-- also affect voter participation. Multivariate models that take into account other predictors can place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. 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.

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground for president, governor or senate voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-

FINAL D R A F T

Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line.

In general, analysis of the aggregate data at the county level provides 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.

Information collected for the Census Bureau Current Population Survey in November 2004 makes it possible to examine the influence of voter ID requirements at the individual level. Self-identified registered voters reported their experience at the polls in the survey. (Note that the voter turnout rate for the CPS sample, an average of 89%, is much higher than the turnout rates presented in the aggregate data analysis, which average 58%. The difference is a result of several factors, including different denominators in calculating the turnout rate – self-reported registered voters in the CPS versus the much larger voting-age population for the aggregate data. Also some survey respondents overstate their incidence of voting.) Nevertheless, the CPS serves as a widely accepted source of data on voting behavior.

The dependent variable in the individual analyses is whether respondents said they voted in the 2004 election. As in the aggregate analysis the contextual variables consist of whether the state was a battleground state or had competitive state-level races. The analysis also controlled for gender, age in years, education, household income, race or ethnicity, and employment status, marital status, and residential mobility.

The analysis revealed that voter identification requirements exerted 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, 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.

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. (Note

FINAL D R A F T

that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum 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.

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. 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.

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 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 Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. 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. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

FINAL D R A F T

- 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.
- Self-reported 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.
- 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.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer 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

FINAL D R A F T

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.

FINAL D R A F T

4. Litigation over Voter ID Requirements

There have been a handful of cases challenging identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether or not laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional. Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

Non-photo identification. For the most part, courts have looked favorably on cases challenging requirements that voters present some form of identifying documents if the photo identification is the only form accepted. In *Colorado Common Cause v. Davidson*, No. 04CV7709, 2004 WL 2360485, at *1 (Colo. Dist. Ct. Oct. 18, 2004), plaintiffs challenged a law requiring all in-person voters to show identification (not just first-time registrants). The court upheld this requirement against a constitutional challenge. Similarly, in *League of Women Voters v. Blackwell*, 340 F. Supp. 2d 823 (N.D. Ohio 2004), the court rejected a challenge to an Ohio directive requiring first-time voters who registered by mail to provide one of the HAVA-permitted forms of identification, in order to have their provisional ballots counted. Specifically, the directive provided that their provisional ballots would be counted if the voter (a) orally recited his driver's license number or the last four digits of his social security number or (b) returned to the polling place before it closed with some acceptable identification (including reciting those identification numbers). *Id.* This was found to be consistent with HAVA.

Photo ID. Since the 2004 election, two states have adopted laws requiring photo identification in order to have one's vote counted, without an affidavit exception: Georgia and Indiana. Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the Plaintiff's motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*,

FINAL D R A F T

Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement without an affidavit exception (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita and Crawford v. Marion County Election Board*). Cross-motions for summary judgment are currently pending. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at *1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at *1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3. The court's decision in this case indicates that courts are likely to look strictly on photo ID requirements.

Privacy. In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the court struck down on due process grounds a Virginia law requiring disclosure of voters' social security numbers for voter registration. The social security numbers recorded in voter registration lists had been disclosed to the public and political parties that had requested the lists. The court found that the requirement to give the social security number effectively conditioned rights on the consent to an invasion of privacy. It concluded that this public disclosure of the social security numbers was not necessary to achieve the government's interest in preventing fraud. On the other hand, in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000), the court rejected privacy challenges based on both the Constitution and federal statutes, to a Tennessee law requiring social security numbers for voter registration since 1972. 226 F.3d at 755. Second, the NVRA only permits requiring the minimum amount of information necessary to prevent duplicate voter registration and to determine eligibility. The distinction appears to be between the use of Social Security numbers for internal purposes only, which was deemed permissible, and the disclosure of those numbers to the public which was not.

These decisions suggest that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions

FINAL D R A F T

suggest that best practice may be to conform to the NVRA's limitation on requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

FINAL D R A F T

5. Developments since 2004

Since the passage of HAVA, with its limited requirements for voter identification, and following the 2004 election, debate over voter ID has taken place in state legislatures across the country. That debate has not been characterized by solid information on the consequences of tightening requirements for voters to identify themselves before being permitted to cast a regular, rather than a provisional, ballot.

Better information might improve the quality of the debate. Answers to the following key questions are not available in a form that might satisfy those on both sides of the argument.

- What is the overall incidence of vote fraud?
- How does fraud take place in the various stage of the process: registration, voting at the polls, absentee voting, or ballot counting?
- What contribution can tighter requirements for voter ID make to reducing vote fraud?
- What would be the other consequences of increasingly demanding requirements for voters to identify themselves? This is the question addressed, within the limits of the available data, in the analysis in this report.

This information would allow a more informed judgment to be brought to bear in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

State Voter Databases and Voter ID

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

FINAL D R A F T

HAVA does not require that the states notify registrants to remedy any failure to provide either of these numbers or to confirm that they have provided a verifiable number. Verification at the time of registration could forestall difficulties at the polling place. HAVA is silent on how the ID might be required at the polling place for new voters whose driving license or Social Security number could not be verified. Errors in recording those numbers are sure to occur.

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation require that voters must be able to confirm their registration through a secure access to the SVRL. It also requires voters to present ID at the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

As some states gain experience in this area, the EAC would perform a useful service by making timely recommendations of best practices for all states to consider.

6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.¹⁰ The dynamics of Voter ID requirements – how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That research might address that, so far as may be

¹⁰ In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." The exclusion of voters through restrictive ID requirements could affect election outcomes as much as fraud by voters at the polls. *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

FINAL D R A F T

necessary to reduce vote fraud, could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended by our colleague Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.¹¹

¹¹ "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. These electronic photos should satisfy the anti-fraud concerns of conservatives as much as printed photos that citizens would be required to bring to the polls. . . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier. "

FINAL D R A F T

Appendices

- a. Summary of case law on Voter ID issues (included with this draft)
- b. Analysis of Effects of Voter ID Requirements on Turnout (attached as a separate document)
- c. Indexed database of major articles on Voter ID Requirements and related topics (included with this draft)
- d. Compendium of states' legislation, procedures, and litigation

FINAL D R A F T

APPENDIX –Court Decisions and Literature on Voter Identification and Related Issues

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

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

Greidinger v. Davis, 1993

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

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

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

Colorado Common Clause v. Davidson, 2004

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

FINAL D R A F T

- Preventing voter fraud is a compelling interest since it is irreversible once vote is cast
- Only marginally more intrusive than HAVA, many types of identification permitted – thus, valid

McKay v. Thompson, 2000

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

Kemp v. Tucker, 1975

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

Perez v. Riddlehoover, 1966

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

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

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

This was an action just before the November 2004 election for a temporary restraining order, which was granted. The ACLU challenged a Minnesota law allowing the use of tribal identification cards with the name, address, and photograph as a valid identification (equal to a driver's license) for use in "completing" an incomplete mail-in voter registration only if the Indian lives on the reservation. 2004 WL 2428690, at *1. The Court ruled that this distinction would likely violate the Equal Protection Clause because there was no rational basis for differentiating

FINAL D R A F T

between the validity of the identification based on whether or not the cardholder lives on the reservation. *Id.* at *1, 3.

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

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

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

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

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

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

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

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

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

FINAL D R A F T

provisional ballots would not be counted if the voter applied for an absentee ballot. 2004 WL 2360485, at *1. The plaintiffs also challenged the provisions under HAVA. The identification provision allowed nearly all forms of acceptable identification under HAVA. *Id.* at *6.

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

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

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

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

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

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

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

As to the Fourteenth and Fifteenth Amendment claims, the Court reasoned that preventing voter fraud is a compelling goal, and identification provisions are "an essential means of achieving the goal." *Id.* at 739. The Court also rejected the equal protection claim because the statutes did not create a distinction at all. *Id.* at 740 n.3. Since race is just one of

FINAL D R A F T

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

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

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

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

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

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

Current Litigation Concerning Voter ID Issues¹²

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

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

¹² As of January 2, 2006

FINAL D R A F T

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

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

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)¹³. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

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

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.¹⁴ As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

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

The Indiana lawsuit is similar to its Georgia counterpart in content, though not in status. In Indiana separate lawsuits, now joined, were filed by the state Democratic Party and the

¹³ Litigation documents are available at the Election Law @ Moritz website.
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

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

024059

FINAL D R A F T

Indiana Civil Liberties Union (ICLU). The Democratic Party's lawsuit is directed against the Indiana Secretary of State, while the ICLU's lawsuit involves the Marion County Board of Elections and the State of Indiana. Like Georgia, Indiana law also requires citizens voting in person to present some form of official photo identification. IC § 3-11-8-25.1. Voters unable to present identification are given a provisional ballot, which is counted if they are able to provide the required identification by Noon on the second Monday following the election. IC § 3-11.7-5-1. Unlike Georgia, Indiana provides state issued identification at no charge. However, there are costs involved in the process, including transportation to the Bureau of Motor Vehicles, and payment for documents such as birth certificates, which are needed to obtain the ID. (Second Am. Compl. 6).

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

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.¹⁵ The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

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

¹⁵ According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

FINAL D R A F T

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

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

Historical articles:

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

FINAL D R A F T

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

Marginally relevant/limited discussion of Voter ID issues

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

Political Science Literature

Abramson, Paul R. "Political Participation." In *The Encyclopedia of Democracy*. Ed. Seymour Martin Lipset. Washington, DC: Congressional Quarterly, 1995.

Aldrich, John H. "Rational Choice and Turnout." *American Journal of Political Science*. 37:1 (February 1993).

FINAL D R A F T

Arvizu, John R. and F. Chris Garcia. "Latino Voting Participation: Explaining and Differentiating Latino Voter Turnout." *Hispanic Journal of Behavioral Sciences*. 18:2 (May 1996).

Barber, Benjamin R. *Strong Democracy: Participatory Politics for a New Age*. Berkeley, CA: University of California Press, 1984.

Blais, Andre. *To Vote or Not to Vote? The Merits and Limits of Rational Choice Theory*. Pittsburgh, PA: University of Pittsburgh Press, 2000.

Blais, Andre and Robert Young. "Why Do People Vote? An Experiment in Rationality." *Public Choice*. 99:1-2 (April 1999).

Bowler, Shaun. David Brockington and Todd Donovan. "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001).

Boyd, Richard W. "The Effects of Primaries and Statewide Races on Voter Turnout." *Journal of Politics*. 51:3 (August 1989).

Brady, Henry E., Sidney Verba, and Kay Lehman Schlozman. "Beyond SES: A Resource Model of Political Participation." *American Political Science Review*. 89:2 (June 1995).

Brians, Craig Leonard. "Voter Registration's Consequences for the Mobile: A Comparative Turnout Study." *Political Research Quarterly*. 50:1 (March 1997).

Brians, Craig Leonard and Bernard Grofman. "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001).

----- "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model." *Public Choice*. 99:1-2 (April 1999).

Burnham, Walter Dean. "The Appearance and Disappearance of the American Voter." In *Electoral Participation: A Comparative Analysis*. Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Cassel, Carol A. and Robert C. Luskin. "Simple Explanations of Turnout Decline." *American Political Science Review*. 82:4 (December 1988).

Castanheira, Micael. "Victory Margins and the Paradox of Voting." *European Journal of Political Economy*. 19:4 (November 2003).

Center for the Study of the American Electorate. "2004 Election Report". 4 November 2004. Available online at ??????????

Cho, Wendy K. Tam. "Naturalization, Socialization, Participation: Immigrants and (Non-) Voting." *Journal of Politics*. 61:4 (November 1999).

Crewe, Ivor. "Electoral Participation." In *Democracy at the Polls: A Comparative Study of Competitive National Elections*. Eds. David Butler, Howard R. Penniman, and Austin Ranney. Washington, DC: American Enterprise Institute, 1981.

FINAL D R A F T

Franklin, Mark N. "Electoral Participation." In *Comparing Democracies: Elections and Voting in Global Perspective*. Eds. Laurence Le Duc, Richard G. Niemi, and Pippa Norris. Thousand Oaks, CA: Sage Publications, 1996.

Franklin, Mark N., Cees van der Eijk, and Erik Oppenhuis. "The Institutional Context: Turnout." In *Choosing Europe? The European Electorate and National Politics in the Face of Union*. Eds. Cees van der Eijk and Mark N. Franklin. Ann Arbor, MI: University of Michigan Press, 1996.

Gerber, Alan S., Donald P. Green, and Matthew Green. "Partisan Mail and Voter Turnout: Results from Randomized Field Experiments." *Electoral Studies*. 22:4 (December 2003).

Gerber, Alan S., Donald P. Green, and Ron Shachar. "Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment." *American Journal of Political Science*. 47:3 (July 2003).

Gimpel, James G., Joshua Dyck, and Daron Shaw. "Registrants, Voters, and Turnout Variability across Neighborhoods." *Political Behavior*. 26:4 (December 2004).

Gimpel, James G. and Jason E. Schuknecht. "Political Participation and the Accessibility of the Ballot Box." *Political Geography*. 22:5 (June 2003).

Gray, Mark and Miki Caul. "Declining Voter Turnout in Advanced Industrial Democracies, 1950 to 1997: The Effects of Declining Group Mobilization." *Comparative Political Studies*. 33:9 (November 2000).

Green, Donald P. and Alan S. Gerber. *Get Out the Vote!: How to Increase Voter Turnout*. Washington, DC: Brookings Institution Press, 2004.

Hanmer, M.J. and Michael W. Traugott. "The Impact of Voting by Mail on Voter Behavior." *American Politics Research*. 32:4 (July 2004).

Highton, Benjamin. "Alternative Tests for the Effects of Campaigns and Candidates on Voting Behavior." In *Capturing Campaign Effects*. Eds. Henry Brady and Richard Johnston. Ann Arbor, MI: University of Michigan Press, forthcoming.

----- "Easy Registration and Voter Turnout." *Journal of Politics*. 59:2 (May 1997).

----- "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000).

----- "Voter Registration and Turnout in the United States." *Perspectives on Politics*. 2:3 (September 2004).

----- "Who Reports? Self-Reported Versus Proxy-Reported Voter Turnout." *Public Opinion Quarterly*. Forthcoming.

Highton, Benjamin and Arthur Burris. "New Perspectives on Latino Voter Turnout in the United States." *American Politics Research*. 30:3 (May 2002).

Highton, Benjamin and Raymond E. Wolfinger. "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998).

FINAL D R A F T

—— "The Political Implications of Higher Turnout." *British Journal of Political Science*. 31:1 (January 2001).

Highton, Benjamin, Raymond E. Wolfinger, and Megan Mullin. "How Postregistration Laws Affect the Turnout of Citizens Registered to Vote." *State Politics and Policy Quarterly*. 5:1 (Spring 2005).

Hirczy, Wolfgang. "The Impact of Mandatory Voting Laws on Turnout: A Quasi-Experimental Approach." *Electoral Studies*. 13:1 (March 1994).

Jacobs, Lawrence et al. *American Democracy in an Age of Rising Inequality*. Report of the American Political Science Association's Task Force on Inequality and American Democracy. Available online at <http://209.235.207.197/imgtest/taskforcereport.pdf>

Jones, Bill. "California's Long Road to Election Reform." *Election Law Journal*. 1:4 (December 2002).

Karp, Jeffrey A. and Susan A. Banducci. "Absentee Voting, Mobilization, and Participation." *American Politics Research*. 29:2 (March 2001).

—— "Going Postal: How All-Mail Elections Influence Turnout." *Political Behavior*. 22:3 (September 2000).

Kelley, Stanley, Richard E. Ayres, and William G. Bowen. "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967).

Kimberling, William C. and Peggy Sims. *Federal Election Law 91: A Summary of Federal Election Laws Pertaining to Registration and Voting*. Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1991.

—— *Federal Election Law 96: A Summary of Federal Election Laws Pertaining to Registration, Voting, and Public Employee Participation*. Washington, DC: National Clearinghouse on Election Administration, Federal Election Commission, 1996.

Kleppner, Paul. *Who Voted?: The Dynamics of Electoral Turnout, 1870- 1980*. New York, NY: Praeger Publishers, 1982.

Knack, Stephen. "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*. 57:3 (August 1995).

—— "Does Rain Help the Republicans? Theory and Evidence on Turnout and the Vote." *Public Choice*. 79:1-2 (April 1994).

Lapp, John A. "Elections—Identification of Voters." *American Political Science Review*, 3:1 (February 1909).

Leighley, Jan E. and Arnold Vedlitz. "Race, Ethnicity, and Political Participation: Competing Models and Contrasting Explanations." *Journal of Politics*. 61:4 (November 1999).

Lijphart, Arend. "The Political Consequences of Electoral Laws, 1945-85." *American Political Science Review*. 84:2 (June 1990).

FINAL D R A F T

----- "Unequal Participation: Democracy's Unresolved Dilemma." *American Political Science Review*. 91:1 (March 1997).

Magleby, David B. "Participation in Mail Ballot Elections." *Western Political Quarterly*. 40:1 (March 1987).

Manza, Jeff and Clem Brooks. "The Gender Gap in U.S. Presidential Elections: When? Why? Implications?" *American Journal of Sociology*. 103:5 (March 1998).

----- "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology*. 103:1 (July 1997).

----- "Social Cleavages and Political Alignments: U.S. Presidential Elections, 1960-1992." *American Sociological Review*. 62:6 (December 1997).

----- *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions*. New York, NY: Oxford University Press, 1999.

Martin, Paul. "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science*. 47:1 (January 2003).

Mattila, Mikko. "Why Bother? Determinants of Turnout in the European Elections." *Electoral Studies*. 22:3 (September 2003).

McDonald, Michael P. "Every Eligible Voter Counts: Correctly Measuring American Turnout Rates." *Brookings Institution Report*. 2004. Available online at <http://www.brookings.edu/views/papers/20040909mcdonald.pdf>

McDonald, Michael P. and Samuel Popkin. "The Myth of the Vanishing Voter." *American Political Science Review*. 95:4 (December 2001).

Merrifield, John. "The Institutional and Political Factors that Influence Voter Turnout." *Public Choice*. 77:3 (November 1993).

Mitchell, Glenn E. and Christopher Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior*. 17:2 (June 1995).

Morone, James A. *The Democratic Wish: Popular Participation and the Limits of American Government*. New Haven, CT: Yale University Press, 1998.

Nagler, Jonathan. "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991).

Nardulli, Peter F., Dalager, Jon K., and Donald E. Greco. "Voter Turnout in U.S. Presidential Elections: An Historical View and Some Speculation." *PS: Political Science and Politics*. 29:3 (September 1996).

FINAL D R A F T

National Research Commission on Election and Voting. "Interim Report on Alleged Irregularities in the United States Presidential Election 2 November 2004." 23 December 2004. Available online at <http://elections.ssrc.org/research/InterimReport122204.pdf>

Neeley, G.W. and L.E. Richardson. "Who Is Early Voting? An Individual Level Examination." *Social Science Journals*. 38:3 (Autumn 2001).

Oliver, J. Eric. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science*. 40:2 (May 1996).

Pacek, Alexander and Benjamin Radcliff. "Turnout and the Vote for Left-of Centre Parties: A Cross-National Analysis." *British Journal of Political Science*. 25:1 (January 1995).

Palfrey, Thomas R. and Howard Rosenthal. "Voter Participation and Strategic Uncertainty." *American Political Science Review*. 79:1 (March 1985).

Pantoja, Adrian D., Ricardo Ramirez, and Gary M. Segura. "Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos." *Political Research Quarterly*. 54:4 (December 2001).

Patterson, Thomas E. *The Vanishing Voter*. New York, NY: Alfred A. Knopf, 2002.

Piven, Frances Fox and Richard A. Cloward. *Why Americans Don't Vote*. New York, NY: Pantheon Books, 1988.

Phillips, Kevin P. and Paul H. Blackman. *Electoral Reform and Voter Participation: Federal Registration, a False Remedy for Voter Apathy*. Washington, DC: American Enterprise Institute for Public Policy Research, 1975.

Plutzer, Eric. "Becoming a Habitual Voter: Inertia, Resources and Growth in Young Adulthood." *American Political Science Review*. 96:1 (March 2002).

Powell, G. Bingham, Jr. "American Voter Turnout in Comparative Perspective." *American Political Science Review*. 80:1 (March 1986).

----- *Contemporary Democracies: Participation, Stability, and Violence*. Cambridge, MA: Harvard University Press, 1982.

----- "Constitutional Design and Citizen Electoral Control." *Journal of Theoretical Politics*. 1:2 (April 1989).

----- "Voting Turnout in Thirty Democracies: Partisan, Legal, and Socio-Economic Influences." In *Electoral Participation: A Comparative Analysis*. Ed. Richard Rose. Beverly Hills, CA: Sage, 1980.

Rallings, C., M. Thrasher and G. Borisyuk. "Seasonal Factors, Voter Fatigue and the Costs of Voting." *Electoral Studies*. 22:1 (March 2003).

Rosenstone, Steven J. and John Mark Hansen. *Mobilization, Participation, and Democracy in America*. New York, NY: Macmillan, 1993.

FINAL D R A F T

Rosenstone, Steven J. and Raymond E. Wolfinger. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978).

Rusk, Jerrold G. "The Effect of the Australian Ballot Reform on Split Ticket Voting: 1876 – 1908." *American Political Science Review*. 64:4 (December 1970).

Shaw, Daron, Rodolfo O. de la Garza, and Jongho Lee. "Examining Latino Turnout in 1996: A Three-State, Validated Survey Approach." *American Journal of Political Science*. 44:2 (April 2000).

Southwell, Priscilla L. and Burchett, Justin I. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly*. 28:1 (January 2000).

Squire, Peverill, Raymond E. Wolfinger, and David P. Glass. "Presidential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987).

Stein, Robert M. "Introduction: Early Voting (in Research Notes)." *Public Opinion Quarterly*. 62:1 (Spring 1998).

Stein, Robert M. and Patricia A. Garcia-Monet. "Voting Early but Not Often." *Social Science Quarterly*. 78:3 (September 1997).

Timpone, Richard J. "Structure, Behavior, and Voter Turnout in the United States." *American Political Science Review*. 92:1 (March 1998).

Tollison, Robert D. and Thomas D. Willett. "Some Simple Economics of Voting and Not Voting." *Public Choice*. 14:1 (April 1973).

Traugott, Michael W., Adam Berinsky, and Nancy Burns. "Who Votes by Mail?" *Public Opinion Quarterly*. 65:2 (Summer 2001).

Verba, Sidney, Norman H. Nie, and Jae-On Kim. *Participation and Political Equality: A Seven-Nation Comparison*. Cambridge, UK: Cambridge University Press, 1978.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. *Voice and Equality: Civic Volunteerism in American Politics*. Cambridge, MA: Harvard University Press, 1995.

Wattenberg, Martin P. "Turnout Decline in the U.S. and Other Advanced Industrial Democracies." *Research Monograph: Center for the Study of Democracy, University of California, Irvine*. September 1998. Available online at <http://www.democ.uci.edu/papers/marty.html>

Winders, Bill. "The Roller Coaster of Class Conflict: Class Segments, Mass Mobilization, and Voter Turnout in the US., 1840-1996." *Social Forces*, 77:3 (March 1999).

Wolfinger, Raymond E. "The Rational Citizen Faces Election Day or What Rational Choice Theorists Don't Tell You about American Elections." In *Elections at Home and Abroad: Essays in Honor of Warren E. Miller*. Eds. M. Kent Jennings and Thomas E. Mann. Ann Arbor, MI: University of Michigan Press, 1994.

FINAL D R A F T

Wolfinger, Raymond E., David P. Glass, and Peverill Squire. "Predictors of Electoral Turnout: An International Comparison." *Policy Studies Review*. 9:3 (Spring 1990).

Wolfinger, Raymond E. and Steven J. Rosenstone. *Who Votes?* New Haven, CT: Yale University Press, 1980.

FINAL D R A F T

Appendix



"Tom O'Neill"
[Redacted]

03/15/2006 05:54 PM

To klynndyson@eac.gov

cc

bcc

Subject RE: Draft comments on the Provisional Voting document

Karen, You'll have it tomorrow.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Wednesday, March 15, 2006 4:37 PM
[Redacted]

Subject: RE: Draft comments on the Provisional Voting document

Hi Tom-

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

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

024071



Gracia Hillman/EAC/GOV
03/02/2006 02:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,
rmartinez@eac.gov, Ddavidson@eac.gov, sbanks@eac.gov,
Juliet E. Thompson/EAC/GOV@EAC
bcc

Subject Re: Eagleton close-out meeting 

History:

 This message has been replied to.

Nicole's email says the time is 2:30 to 4:30, making it sound like one meeting. I am not suggesting two separate days but inquiring about the need for there to be two separate sessions, per our GC's counsel.

024072



"Tom O'Neill"

02/24/2006 05:24 PM

To klynndyson@eac.gov

cc

bcc

Subject RE: Draft comments on the Provisional Voting document

History: This message has been replied to.

Karen,

I think we should continue with our plan to have a teleconference on Feb. 28. My quick review of the written comments tells me some further give-and-take is needed. I believe we agreed on 4:00 p.m. as the time for this conversation, a change from the original hour of 3.

The call in number will be 877-805-0964, ID# is 869580. Best wishes for a good weekend.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Friday, February 24, 2006 9:10 AM

Subject: RE: Draft comments on the Provisional Voting document

Tom-

It occurs to me that perhaps a conference call is no longer necessary? Have the team take a look at the Provisional Voting Best Practice EAC edits and let me know.

Perhaps it would be better to schedule a brief conversation after I've received the Voter ID document. Such a conversation could focus on the close-out meeting at the end of March and the issues we wish to cover at that meeting.

Your call.

K

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

024073

Washington, DC 20005
tel:202-566-3123

024074



"Tom O'Neill"
[Redacted]
02/23/2006 06:41 PM

To klynndyson@eac.gov
cc
bcc

Subject RE: Draft comments on the Provisional Voting document

History: This message has been replied to.

Thanks, Karen. Looking forward to our conversation on the 28th.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Thursday, February 23, 2006 4:31 PM

[Redacted]

Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu;
foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu;
john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti;
tokaji.1@osu.edu

Subject: RE: Draft comments on the Provisional Voting document

Tom and John-

Attached please find the EAC comments to your draft report. We look forward to reviewing the Voter ID report in a week or so. I should have a date for the March project close-out meeting by early next week.

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

"Tom O'Neill"
[Redacted]
02/16/2006 03:33

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "Johanna Dobrich" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu,

PM

foley.33@osu.edu, lauracw@columbus.rr.com
SubjectRE: January Progress Report

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Thursday, February 16, 2006 1:33 PM

Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu;
foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu;
john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti;
tokaji.1@osu.edu

Subject: Re: January Progress Report

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

024076

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

Shall we schedule a conference call for Friday, February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?

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

024077



Nicole
Mortellito/CONTRACTOR/EAC
/GOV

02/23/2006 04:12 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Final Best Practices document final and attachment Two

History:

 This message has been forwarded.

Final markups

Regards,

Nicole K. Mortellito
Research Assistant
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.2209 phone
202.566.3128 fax



Best Practices FINAL 2-23-06.doc



- Final Best Practices__attachment Two.xls

024078

DRAFT

**Deliberative Process
Privilege**

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

November 23, 2005

Submitted by

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

The Moritz College of Law, The Ohio State University

024079

FINAL DRAFT

11/23/2005

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

Best Practices to Improve Provisional Voting

CONTENTS

Overview/Executive Summary <u>(PLEASE PROVIDE)</u>	
Background of the research	3
Help America Vote Act	3
Provisional Ballots in the 2004 Election	4
Effectiveness of Provisional Voting	8
Need for Promulgation of Best Practices	11
Recommendations for Best Practices	11
Best Practices for Each Step of the Process	12
A. Registration and Pre-Election Information for Voters	13
B. At the Polling Place	14
C. Evaluating Voter Eligibility and Counting Provisional Ballots	15
D. Verification of Provisional Ballots	17
E. Post-election Information for Voters	17
F. State Laws Governing Litigation over Provisional Voting	18
Broader Considerations	18
G. Integrity and the Appearance of Integrity	18
H. Continuous Assessment of the Provisional Ballot Process	18
Conclusion	19
Research Methodology	
Attachment 1 – Characteristics of the Provisional Voting Process	21
Attachment 2 – State Provisional Voting Systems	28

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

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

Provisional Ballots in the 2004 Election

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

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

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

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

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

⁵ These figures differ slightly from those in the Election Day Survey. Data used for this study include complete voting data for New Mexico, for which the Election Day Survey had only partial data, and vote totals for Pennsylvania, which was not included in the provisional voting analysis in the Election Day Survey. See the appendix to this report for a full explanation of the differences in data between this research and the Election Day Survey.

⁶ California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

⁷ Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

⁸ See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

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.

Formatted: Bullets and Numbering

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.

Deleted: the

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

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

1. "New" states may have a political culture different from "old" states. That is, underlying features of the "new" states political system may be the reason they had not adopted some form of provisional voting before HAVA. The "new" states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. If the inconsistent performance in the "new" states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.¹⁰ This ballot should mention something about election judges and their training.
2. "Old" states may devote fewer resources to updating their registration files or databases because they are comfortable with provisional ballots as a fail safe way for voters with registration problems a way to cast a ballot. (wording too strong) The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tabs: -0.33", List tab + Not at 0.25"

Formatted: Highlight

Other influences decreasing consistency among the states include:

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

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

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

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

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

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

Formatted: Highlight

Formatted: Bullets and Numbering

Formatted: Bulleted + Level: 1 +
Aligned at: 0.25" + Tab after: 0.5"
+ Indent at: 0.5", Tabs: 0.21", List
tab + Not at 0.25" + 0.5"

Deleted: :

Formatted: Highlight

Formatted: Highlight

FINAL DRAFT

11/23/2005

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

Election Line reported that:

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

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

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

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

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

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

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

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

Legislative Response

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

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

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

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

Litigation

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

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

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

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

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

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

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

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

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

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

Best Practices For Each Step In The Process

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

The Importance of Clarity

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

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 P3d 725, 727-728 (Wash. 2004)

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

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

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

FINAL DRAFT

11/23/2005

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

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

B. At the Polling Place

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

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

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

²⁵ The Century Foundation, op. cit.

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

²⁷ 2005 N.M. Laws 270 page no. 4-5.

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

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

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

³³ In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c),(1) Florida: until 5:00 P.M. on the third day following the election. Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois— 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(i). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

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

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

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

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

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

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

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

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

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

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

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

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

ATTACHMENT 1 -- Characteristics of the Provisional Voting Process

Classification of the States

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

Deleted: categories analyzed here ar

Deleted: e

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

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

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

New vs. Old States

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

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

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

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

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

FINAL DRAFT

11/23/2005

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

Statewide List of Registered Voters

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

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

FINAL DRAFT

11/23/2005

Table 2 (This table is no longer germane.)
CATEGORIZATION OF STATES -- Statewide Registration Database

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

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

Out-of-Precinct Ballots

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

FINAL DRAFT
11/23/2005

Table 3
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots

<u>Out-of-Precinct</u>	<u>In-Precinct Only</u>	<u>HAVA EXEMPT OR NA</u>
<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.

FINAL DRAFT

11/23/2005

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

Table 4

CATEGORIZATION OF STATES -- Forms of Identification Required

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

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

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

Verification Method

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

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>		
<u>4</u>	<u>14</u>	<u>14</u>	<u>10</u>	<u>9</u>

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

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

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

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

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

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

ATTACHMENT 2 -- Data

Table 1 -- Provisional Voting Basic Statistics

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

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

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



"Tom O'Neill"
[Redacted]

02/21/2006 02:47 PM

To klynndyson@eac.gov

cc

bcc

Subject RE: Meeting with EAC in March

Thanks, Karen

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Tuesday, February 21, 2006 2:22 PM
[Redacted]

Cc: aambrogi@eac.gov; asherrill@eac.gov; sbanks@eac.gov; ecollver@eac.gov;
nmortellito@eac.gov

Subject: Re: Meeting with EAC in March

Tom-

I will begin to poll the Commissioners to get a sense of when they might be available to do a "close out " meeting with Eagleton.

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

[Redacted]

02/21/2006 10:45 AM

To klynndyson@eac.gov

cc

Subject Meeting with EAC in March

024109

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill

024110



"Tom O'Neill"

02/21/2006 10:45 AM

To klyndyson@eac.gov

cc

bcc

Subject Meeting with EAC in March

History:

 This message has been replied to.

Karen,

The Eagleton-Moritz team would like to schedule a meeting with the EAC in March. It would be the final substantive meeting on our contract, which expires at the end of March.

The agenda would include:

1. Brief the Commission on the principal findings and recommendations of the Voter ID research and hear questions and comments on that work.
2. Discuss the changes we made to the Provisional Voting paper as a result of comments and questions from the Commission.
3. Explore the Commission's intentions for the use of our work as recommendations for best practices or otherwise.

I believe the meeting should take place after you receive the Voter ID paper from us in the first week of March, and ideally after the Commission staff has had enough time for a preliminary review of it.

The earlier we could set a date for this meeting, the more key members of the team would be able to participate.

Tom O'Neill

024111



Amie J. Sherrill/EAC/GOV
02/17/2006 02:28 PM

To Karen Lynn-Dyson/EAC/GOV
cc
bcc
Subject working group

History:

 This message has been replied to.

is there a working group for the provisional voting/voter id project?

Amie J. Sherrill
Special Assistant to Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106

024112



"Tom O'Neill"
[Redacted]
02/16/2006 10:58 PM

To klynndyson@eac.gov
cc
bcc

Subject RE: January Progress Report

History: This message has been replied to.

Thanks, Dan.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Thursday, February 16, 2006 5:09 PM

[Redacted]

Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu;
foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu;
john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti;
tokaji.1@osu.edu
Subject: RE: January Progress Report

Shall we say February 28 at 3:00 PM?

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

"Tom O'Neill"
[Redacted]

02/16/2006 6:03:33 PM

To: klynndyson@eac.gov
cc: "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "Johanna Dobrich" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com
Subject: RE: January Progress Report

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Thursday, February 16, 2006 1:33 PM

Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu

Subject: Re: January Progress Report

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of

024114

States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

Shall we schedule a conference call for Friday, February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?

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

024115



"Tom O'Neill"

02/16/2006 03:33 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu,
bcc

Subject RE: January Progress Report

History: This message has been replied to.

Karen, I'll survey the group about the best time for a conference call. The 24th does not look like a good time. We have a teleconference with the Peer Review Group on the Voter ID paper scheduled for Feb. 22, and therefore would be hard-pressed to review the précis of your comments in time for a discussion on the 24th. The next week would be more promising, perhaps Tuesday, Feb 28 in the afternoon.

We still plan to deliver the Voter ID paper to you the first week in March.

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]

Sent: Thursday, February 16, 2006 1:33 PM

Cc: arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; foley.33@osu.edu; ireed@rutgers.edu; 'Johanna Dobrich'; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; rmandel@rci.rutgers.edu; Tim Vercellotti; tokaji.1@osu.edu

Subject: Re: January Progress Report

Tom-

I have now received comments back on the Provisional Voting Best Practices document, from all of EAC's senior staff. I am in the process of combining these comments into one document, and will get the copy to you by mid-week next week.

By-and-large the comments are not major. The comment of greatest magnitude relates to the fact-checking process and the overall accuracy of regarding Eagleton's/Moritz' recording of States' previous experiences with provisional voting.

Overall, the Commission is continuing to review its option of issuing guidance on this topic, along with best practices.

024116

Shall we schedule a conference call for Friday, February 24 at 10:00 AM to go over the EAC's comments and Eagleton putting the finishing touches on its report?

Also, when should the EAC expect the Voter ID document?

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

024117



"Tom O'Neill"

02/16/2006 10:34 AM

To klynndyson@eac.gov

cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu,
bcc

Subject January Progress Report

History:

 This message has been replied to.

Karen,

Our Progress Report for January is attached. Please note that Rutgers will submit a combined financial report for January and February at the end of this month.

Tom O'Neill



Progress Report January06.doc

024118



EAGLETON INSTITUTE OF POLITICS

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

MONTHLY PROGRESS REPORT
January 2006

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

February 14, 2006

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

024119

OUTLINE

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

INTRODUCTION

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

In January we completed the analytic work on the effect of various voter ID regimes on turnout and produced a draft of the report of that work, which continues to be refined. It will form a critical part of the report to the EAC on voter identification requirements, as will the legal research that has been completed by the Moritz team. We have been in regular contact with the Peer Review Group to arrange a date for it to comment on the draft of the Voter ID analysis and recommendations. (That meeting has now been set for February 22.)

We continued to await the EAC's comments on our Provisional Voting analysis paper (general comments accepting the paper were received on February 10). Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research.

During the month, we made good progress on the revised schedule for the project. Our request for a non-cost extension through March was approved by the EAC, and we are tracking the schedule provided with the request for that extension. As a result of such unanticipated delays we have revised the schedule for the project.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting. Please direct questions or comments about this report to tom_oneill@verizon.net or by telephone at (908) 794-1030.

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. In January, we awaited comments from EAC on the draft report.

Task 3.6: Prepare preliminary draft guidance document.

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, which is now the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is now complete. It constitutes the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: In January, we focused on reviewing and analyzing current voter identification litigation nationwide. We drafted a memo summarizing the two most significant cases, *Common Cause/Georgia v. Billups*, and *Indiana Democratic Party v. Rokita*, which challenged new voter id laws in Georgia and Indiana, respectively. We also wrote a memo summarizing the dismissed 9th circuit case, *Friendly House, et al. v. Janet Napolitano, et al.*, which challenged the voter ID provisions of Arizona Proposition 200. Moritz and Eagleton continued to work closely together to identify and analyze the most