

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:41 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Extension Timeline

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:40 AM -----

Tamar Nedzar/EAC/GOV  
04/19/2006 12:23 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
Subject Re: Fw: Extension Timeline 

K (Lynn-Dyson)-

I saw this before. It's helpful for me to know the proposed end-date, but what we need to get Tom's signature--for this project and Cleveland State--is a memorandum to the file explaining why we are granting the extension and modification, respectively.

From what I understand, in addition to other things, we need the memo in the file to explain our thought process if anything is ever challenged. I think that Eagleton wrote the memo for you last time, but if not, I know you gave it to me...

Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>  
[TNedzar@eac.gov](mailto:TNedzar@eac.gov)  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

04/19/2006 12:06 PM

To Tamar Nedzar/EAC/GOV@EAC  
cc  
Subject Fw: Extension Timeline

T (Nedzar)-

Is this at all useful or not?

025428

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 04/19/2006 12:01 PM -----



"John Weingart"  
<john.weingart@rutgers.edu>

To "Karen Lynn-Dyson" <klynndyson@eac.gov>

04/13/2006 03:18 PM

cc

Please respond to  
john.weingart@rutgers.edu

Subject Extension Timeline



ExtensionTimeLine.doc

Karen - Tom and I are about to call. Attached is our proposed revised timeline.

--

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

025427

<b>Timeline for EAC contract extension period (April – June)</b>	
<b>Date/Time period</b>	<b>Activity</b>
April 1 - 2	Prepare briefing for EAC
April 3	Briefing EAC in Washington
April 9 – 10	Prepare timeline for contract extension and March progress report.
April 11	Team meeting: review and approve new timeline
April 12 – 13	Discussion with Karen Lynn-Dyson about contract extension and schedule for teleconference involving EAC, members of the PRG, and our researchers on our statistical analysis of voter ID and turnout.
April 14 - 19	Submit request for no-cost extension until June 30 to permit briefing the EAC 's Advisory Committees in May and a presentation at the EAC's June public meeting about our research.
April 26 – May 5	Prepare for and participate in teleconference with PRG, EAC and our researchers. Prepare April Progress Report.
May 5	Revise Voter ID paper to reflect new comments in teleconference.
April 28 – May 10	Prepare and produce final reports on Provisional Voting and Voter ID, with appendices and supporting materials. Circulate for comments. Revise and complete.
May 10 – 12	Distribute final reports to EAC and its advisory boards.
May 11 – 18	Prepare power point brief on Provisional Voting and Voter ID for EAC Advisory Board meeting. Distribute hard copy of PowerPoint presentation to Advisory Boards a week before their meeting.
May 25	EAC Advisory Boards Meeting
May 26 – June 2	Teleconference with EAC to review reaction of Advisory Boards to the reports. Prepare May progress report
June 2 – 9	Revise summary report to take account of Advisory Boards' comments. Circulate for comments and complete.
June 12 – 16	Produce printed version of final summary report. Prepare PowerPoint presentation for EAC meeting.
June 23	Presentation of complete report at EAC public meeting.
	<b>June 30 Project complete</b>

See items for discussion at our April 13 teleconference on the next page.

### Items for discussion

1. What paperwork needs to be completed to approve the no-cost extension, and what would be the schedule for review and action by the EAC?
2. Set a date for teleconference at which EAC staff and/or commissioners can participate in a discussion with members of the Peer Review Group and Eagleton-Moritz researchers on the statistical analysis of the effects of various voter ID requirements on turnout.
3. What arrangements need to be made, and by what date, to provide for review of our reports and analysis by the EAC's Advisory Boards, presumably at the Boards' May meeting? What form would that presentation take? What parts of our work would be submitted to the Advisory Boards – summary reports, selected research papers, substantially all back up research?
4. Following the Advisory Board meeting, what arrangements need to be made, and by what date, to present our work at the public meeting of the EAC in June?
5. What is the preferred form for the delivery of our reports –hard copies, electronic copies.

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:40 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Attendance at Monday Meeting

April 3 Eagleton close-out meeting attendance

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:38 AM -----



"Tom O'Neill"

03/31/2006 05:19 PM

To klynndyson@eac.gov  
cc  
Subject Attendance at Monday Meeting

Karen,

Here is the roster of the members of our team who will attend the meeting on Monday.

David Andersen, Graduate Assistant, The Eagleton Institute of Politics  
John Harris, Graduate Assistant, The Eagleton Institute of Politics  
Ingrid Reed, Director, New Jersey Project, The Eagleton Institute of Politics  
Dan Tokaji, Assistant Professor of Law, Moritz College of Law  
Tim Vercellotti, Assistant Director, Eagleton Center for Public Interest Polling, (principal author of the analysis of voter ID requirements on turnout)  
John Weingart, Associate Director, The Eagleton Institute of Politics  
Tom O'Neill, Project Director, The Eagleton Institute of Politics

Tom

025430

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:39 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Eagleton/MoritzVoter ID Report

Put in the portion of the file related to the Voter ID Draft Report and Survey

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:37 AM -----



"John Weingart"  
<john.weingart@rutgers.edu>  
03/21/2006 10:45 AM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov  
cc "Tom O'Neill" [REDACTED]  
Subject Re: Eagleton/MoritzVoter ID Report

Karen - Here is a reply to your question. Sorry not to have gotten it to you more quickly.

There are a couple of reasons why we used the CPS. Most importantly, it is a survey of individual voters, as opposed to election officials. The CPS allows us to make inferences about individual-level characteristics (such as the age, race, education and income of each registered voter who responded to the survey), and how those characteristics combine with voter ID requirements to influence turnout. Also, the sample size is large, allowing for reliable analysis of sub-populations (just Hispanic voters, for example). Because of those two factors, most of the scholarly studies of voter turnout and the institutional and individual-level factors that go into turnout use the CPS.

The EAC also might ask why we collected our own aggregate data as opposed to using the results of the Election Day survey. We could provide greater detail if needed, but, in brief, the EAC Election Day Survey draws data from the jurisdiction that handles elections. In many states that is the county, but in the New England states the EAC Election Day Survey uses towns as its unit of analysis. Our aggregate data attempts to match voter turnout data to Census data, which we have gathered at the county level.

Conceivably, we could have gone through and matched Census data to towns for the New England states, but that would have been very time-consuming. Moreover, it would also have posed a problem with the statistical analysis of the aggregate data, which assumes a two-level statistical model with counties as the first level and states as the second level. Inserting a third level of towns just for the New England states would require that each town in each county be coded with vote totals and Census data for each. That would take months.

025431

Let me know if you need additional information of would like to discuss.

Thanks, John

klynndyson@eac.gov wrote:

>  
> Quick question-  
>  
> What was Eagleton's thinking behind using CPS data rather than EAC's  
> Election Day Survey for the Voter ID report?  
>  
> 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

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:37 AM

To darrell lee  
cc  
bcc  
Subject Fw: Comments on the Eagleton draft

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
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----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:36 AM -----

  
Paul DeGregorio/EAC/GOV  
02/13/2006 04:58 PM

To Karen Lynn-Dyson/EAC/GOV  
cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV  
Subject Comments on the Eagleton draft

Karen,

As requested, here are my comments on the Eagleton draft regarding provisional voting. Please feel free to contact me should you (or they) need clarification. Thanks.

Comments on the Eagleton draft on Provisional Voting

Executive Summary needed. In reading the document in total, it appears to me that it needs an executive summary in the beginning to lay out some of the background and summarize the recommendations made in the document.

Their statistics on page 4 indicating that "just over 63% provisional votes were counted does not match with our 2004 Election Day survey, which stated that "64.5%" were counted. Also on the top of page 5, they indicate the "experienced" states counted an average of "58%" of provisional ballots while "new" states only counted "33%" of provisionals. Since the average on provisional ballots cast was 64.5% counted, the third category (which is not described in those bullets) had to account for a significant amount over 64.5% (since that was the average of all states). What was that category?

For some reason they don't seem to include an argument made by many that one reason provisionals must be cast in the right precinct in order to be counted is that local races are also important and that allowing provisionals to be counted by voters who cast them outside the precinct (and only counting for the upper ballot races outside 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.

Recommendation A.3 on top of page 14 encourages state websites to have particular information. Why don't they also recommend that local websites do the same?

Recommendation B.4 middle of page 14 talks about NM requiring poll worker training. Seems like most states require training; do they have data on that? Florida's statutory training provisions are among the strongest in the nation (I believe they even mention a specific number of hours).

025433

Recommendation C.2. I do not agree with this recommendation and could not support it. It does not take into account the local offices that would not be voted upon with such practices because voters would then not be directed (or go) to their correct polling place to cast a ballot.

Recommendation C3. Why can't the best practice be to send the voter to the correct precinct—if it's in the same building (and probably the same room) as suggested in this recommendation? Why disenfranchise a voter from voting on a local race? This recommendation doesn't make a lot of sense.

Recommendation D2. Why are they suggesting that completing eligibility evaluations are more critical in presidential elections? I am sure some at the state level would argue that their gubernatorial elections are just as important (if not more).

Recommendation H. What do they mean by "national quality organizations"? Can they provide some examples?

On Table 3 Categorization of States. Can they check on Illinois? I'm not sure the law is that clear. In November 2004 Cook County did it one way (counted out-of-precinct) and DuPage County did it another (required in-precinct in order to be counted). You can check with the DuPage County Director of Elections, Robert Saar, (630-4075600) to find out what legal grounds he used.

Table 5 has no states italicized. Is that correct? (because you mention "some states in italics...")

Data differences page. Please explain the 0/8022 discrepancy under North Carolina "differences" (since you indicate the info was not updated from the state).

Attachment 2 --- Data. Where did you get the information on Missouri? Missouri enacted provisional voting in 2002 and I am fairly sure it was in effect for the November 2002 election (which would have been pre-HAVA).

Hope this helps!

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
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pdegregorio@eac.gov  
www.eac.gov

025434

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:37 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: signed contract amendment

Bottom line-

Please make certain you have the signed no-cost extension documents.

Tamar is likely to have a copy or to know where you can get it.

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

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:34 AM ---



"John Weingart"  
<john.weingart@rutgers.edu>  
02/10/2006 03:55 PM  
Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>  
cc  
Subject signed contract amendment

Karen - I now have the no-cost extension signed by the appropriate Rutgers folk and am mailing it to your attention. Would you like a faxed, signed copy too?

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

025435

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:35 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: No Cost Extensions (with extensions)

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:33 AM -----



"John Weingart"  
<john.weingart@rutgers.edu>  
01/13/2006 01:22 PM  
Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>  
cc "Lucy Baruch" <baruch@rci.rutgers.edu>  
Subject No Cost Extensions (with extensions)



Attachment 1-EAC Eagleton Institute budget for no-cost extension-1.xls Attachment 2-EAC Eagleton Institute Budget 3-22-05-1.xls  
Karen - I am attaching a spreadsheet providing the information you have requested (Attachment 1), but I want to highlight a few points which may not be immediately self-evident.

First, the original budget (Attachment 2) we submitted to the EAC, dated March 22<sup>nd</sup>, did not itemize personnel expenses by each person. In addition, when we actually began work two months after submitting that budget, we decided to reallocate more time to people within Eagleton and hire fewer outside hourlies.

Second, in the figures I sent you in late December we tried to account for all the expenses and projections but overlooked a few things including neglecting to include the honoraria for our peer review team. Hence, the figures we're now sending are different than what I sent in December.

Lastly, we originally discussed a no-cost extension through February, but since we don't yet have the EAC comments on our draft Provisional Voting material nor an estimate of when they are likely to be ready, I think it is prudent to extend the no-cost extension through March 31st. We would still like to conclude by the end of February, but if you can approve the extension for another month we could avoid going through this process again if everything is not complete six weeks from now.

It is my understanding that Rutgers will soon be sending our December invoice. At this time, I would also like to request that we combine January and February an invoice the EAC once for that time period.

As you can see, we are currently projecting an ending balance of approximately \$10,000. If additional expenses are incurred beyond what is currently projected, we're confident they will not exceed the

025436

original budget of \$560,002.

Thanks and I look forward to hearing from you.

--

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

025437

**Eagleton Institute of Politics, Rutgers The State University of New Jersey**  
**US Election Assistance Commission Project Budget (original 3/22/05; revised 1/13/06 for no-cost extension)**

Description	Original Budget	Cumulative Expenses through Dec 2005 (actual and committed)	Post Jan 1 Projected Expenses	Projected Balance	Post Jan 1 Projected Hours	Post Jan 1 Hourly Rate
<b>Eagleton Faculty and Staff (salaried and hourly)</b>		<b>84,263.20</b>	<b>15,250.00</b>			
Ruth Mandel, Director and Professor		5,682.86	3,500.00		43	81.98
John Weingart, Associate Director		7,347.00	3,500.00		72	48.74
Ingrid Reed, Director of Eagleton NJ Project		19,500.00	2,500.00		63	40.00
Don Linky, Director of Electronic Democracy Project		8,100.00	1,750.00		47	37.50
Tim Vercellotti, Assistant Research Professor		9,384.00	2,500.00		64	38.96
April Rapp, Research Project Coordinator		12,844.55	0.00		0	
Lauren Vincelli, Project/Bus. Administrator		10,800.90	0.00		0	
Michele Brody, Administrative Assistant		0.00	500.00		23	21.97
Lisa Velasquez, Administrative Assistant		6,503.89	0.00		0	
Linda Phillips, Unit Computing Specialist		2,100.00	250.00		10	25.07
Joanne Pfeiffer, Secretary		2,000.00	750.00		38	19.77
<b>Rutgers Graduate Students (hourly)</b>		<b>15,531.60</b>	<b>3,500.00</b>			
Dave Andersen		6,060.00	1,500.00		125	12.00
Nadia Brown		906.00	0.00		0	
Jilliam Curtis		1,002.00	0.00		0	
Johanna Dobrich		1,635.60	1,000.00		83	12.00
Dave Harris		5,928.00	1,000.00		83	12.00
<b>Fringe (rates vary by employee type)</b>		<b>21,332.56</b>	<b>4,567.50</b>			
<b>Subtotal Personnel Expenses</b>	<b>110,695</b>	<b>121,127.36</b>	<b>23,317.50</b>	<b>(33,749.86)</b>		
<b>Honoraria</b>						
Honoraria for Peer Review Group	10,000	0.00	10,000.00	0.00		
<b>Public Hearings</b>	<b>81,120</b>	<b>948.74</b>	<b>0.00</b>	<b>80,171.26</b>		
Public Hearings	75,000	0.00	0.00			
Transportation	6,120	948.74	0.00			
<b>Briefings/Meetings</b>						
Train, ground, lodging, meals	5,200	1,302.82	1,750.00	2,147.18		
<b>General Operations</b>	<b>20,000</b>	<b>20,029.59</b>	<b>1,750.00</b>	<b>(1,729.59)</b>		
Office supplies, software, telephone, copying, postage	10,000	9,003.11	1,750.00			
Desktop computers, laptop, printer	10,000	11,026.48	0.00			
<b>Subcontracts</b>						
Project Director-Tom O'Neill	79,500	81,750.00	18,000.00	(20,250.00)	192	93.75
Ohio State University (OSU)-Legal Analysis*	84,744	84,222.35	23,692.66	(23,171.01)		
OSU Personnel (with fringe)	50,735	55,724.22	14,001.15			
Ned Foley, Professor		30,514.24	8,687.03		72	120.65
Dan Tokaji, Professor		3,313.65	1,408.82		16	88.05
Laura Williams, Project Coordinator		7,846.00	2,320.00		80	29.00
Sara Sampson, Research Coordinator		5,229.14	705.30		20	35.27
Research Assistants		8,821.19	880.00		100	8.80
OSU Travel	5,950	611.80	1,846.78			
OSU Overhead	28,059	27,886.33	7,844.73			
<b>Subtotal Non-Personnel Expenses</b>	<b>280,564</b>	<b>188,253.60</b>	<b>55,192.66</b>	<b>37,117.84</b>		
<b>Subtotal Direct Costs</b>	<b>391,259</b>	<b>309,380.86</b>	<b>78,510.16</b>	<b>3,367.98</b>		
Fac&Admin (overhead) on Modified Total Direct Cost	153,743	117,790.20	19,881.45	16,071.68		
<b>TOTAL Project Budget</b>	<b>545,002</b>	<b>427,171.06</b>	<b>98,391.61</b>	<b>19,439.66</b>		
<b>Optional Surveys</b>						
State Election Officials	15,000	24,269.04	0.00	(9,269.04)		
<b>Total Project Budget with Optional Survey</b>	<b>560,002</b>	<b>451,440.10</b>	<b>98,391.61</b>	<b>10,170.62</b>		

\*Ohio State University figures are included in the "cumulative expenses through Dec 2005" even though Rutgers has not yet received the cumulative invoices.

025438

**Eagleton Institute of Politics, Rutgers The State University of New Jersey  
US Election Assistance Commission Project Budget (3/22/05)**

Description	Budget	
<b>Personnel</b>		
Eagleton faculty/senior staff	35,000	Mandel, Weingart, Reed, Linky (various percentages)
Eagleton staff: logistics/administrative/clerical	15,000	(various percentages)
Fringe (32.5%)	16,250	
	<b>66,250</b>	
<b>Hourly Personnel</b>		
Research Coordinator	21,250	1250 hours at \$17 per hour
Logistics/Admin Coordinator	12,325	725 hours at \$17 per hour
Research assistants	7,200	300 hours at \$12 per hour for two researchers
Fringe on Hourly (9%)	3,670	
	<b>44,445</b>	
<b>Subtotal Personnel Expenses</b>	<b>\$110,695</b>	
<b>Honoraria</b>		
Honoraria for Peer Review Group	10,000	10 at \$1,000
<b>Public Hearings (3 in 3 cities)</b>		
Public Hearings	75,000	3 hearings at \$25K per EAC figures
2 Hearings in DC- train, ground, lodging, meals*	3,480	attended by 3 staff
1 Hearings in St. Louis- air, ground, lodging, meals**	2,640	attended by 3 staff
	<b>81,120</b>	
<b>Briefings/Meetings with EAC</b>		
Train, ground, lodging, meals***	5,200	5 briefings in DC, attended by 2 staff
<b>General Operations</b>		
Office supplies, software, telephone, copying, postage	10,000	
Desktop computers, laptop, printer	10,000	
	<b>20,000</b>	
<b>Subcontract</b>		
Project Director- O'Neill	79,500	80% time April – Aug., 60% Sept. – Oct.
Ohio State University- Legal Analysis	84,744	Partner institution, Moritz College of Law, OSU
<b>Subtotal Non Personnel Expenses</b>	<b>\$280,564</b>	
<b>Subtotal All Direct Cost</b>	<b>391,259</b>	
Modified Total Direct Cost \$277,015****		
F&A on Modified Total Direct Cost (55.5%)	153,743	Rutgers University federally approved rate.
<b>TOTAL Project Budget</b>	<b>\$545,002</b>	
<b>Optional Surveys</b>		
State Election Officials	15,000	Eagleton
Young Voters	25,000	Eagleton
Provisional Voting, 1st state	116,000	OSU Political Science
Provisional Voting, 1st additional state	75,000	OSU Political Science
Provisional Voting, 2nd additional state	60,000	OSU Political Science
<b>Total Optional Surveys (no F&amp;A)</b>	<b>\$291,000</b>	

\* Travel and lodging to two hearings in DC includes \$260 for train fare to DC, \$200 for hotel/lodging, and \$60 per day for two days for meals= \$580 per person per trip for three people.

\*\* Travel and lodging to one hearing in St. Louis includes \$500 airfare to St. Louis, 2 nights hotel/lodging at \$100, and \$60 per day for three days for meals= \$880 per person for three people.

\*\*\* Travel and lodging to five Briefings/Meetings with EAC includes \$260 for train fare to DC, \$200 for hotel/lodging, and \$60 for meals= \$520 per person per trip for two people.

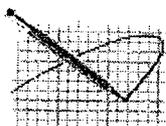
\*\*\*\* Modified total direct cost is equivalent to total direct cost except for two items - F&A included only on first \$25K of subcontract with Project Director (\$79,500) and first \$25K of subcontract with OSU (\$84,744).

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:34 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Emailing: 12-8-05Eagleton Memo

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:32 AM -----



Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV  
01/05/2006 04:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
Subject Emailing: 12-8-05Eagleton Memo

Here is the updated Eagleton Memo.



- 12-8-05Eagleton Memo.doc

Your files are attached and ready to send with this message.  
Regards,

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

025440



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

December 9, 2005

## MEMORANDUM FOR THE RECORD

On May 24, 2005 the U.S. Election Assistance Commission awarded an eight month contract (December 30, 2005) in the amount of \$560,002.00 to the Eagleton Institute of Politics (Rutgers, The State University of New Jersey) to provide research assistance to support development of guidelines on the topics of provisional voting and voter identification procedures.

On November 15, 2005, John Weingart, Associate Director of the Eagleton Institute of Politics, requested via e-mail, a no-cost extension on this contract (E4014127). Mr. Weingart has requested an extension to complete the work of this contract to February 28, 2006.

In subsequent correspondence, Mr. Weingart notes the following as the reason for the request:

“The original work schedule called for EAC to publish in mid-October, voluntary guidance and/or recommended best practices for provisional voting, based on Eagleton’s research. In making that time estimate, we did not provide sufficient time for the EAC to review and consider the draft reports that would form the basis for that publication..... The additional time required to complete the work on provisional voting has delayed the completion of our analysis of Voter Identification issues. The draft report of that topic will be submitted to the EAC in mid-January”.

He further notes:

“If EAC does not object, funds originally allocated for the hearings would be available for transfer to support the additional staff and consultant time necessary to complete the work...“The total project budget is \$560,002. As of October 31<sup>st</sup>, the EAC has been invoiced for \$259,081.79; the balance remaining is \$300,920.21. We anticipate that the project will be complete and the balance of funds fully expended by February 28, 2006. The final invoice for the contract will be submitted to the EAC within 75 days of the close of the project”.

025441

Karen Lynn-Dyson, the EAC's Contracting Officer Representative assigned to this contract has reviewed this request, the rationale and authority for it (FAR 43.103(a)(3)) and finds it to be appropriate. To-date the Eagleton Institute has consistently met its deadlines for major project deliverables and stayed within the project budget. To grant the Eagleton Institute a two month extension on this contract in order to obtain the necessary feedback on major documents it has produced will be within the best interests of the Election Assistance Commission, and thus, the federal government.

EAC's Contracting Officer Representative finds that to grant the Eagleton Institute a no-cost extension for the modification of its contract with the EAC is within the scope of the original agreement and is recommending that this modification to the contract be made.

Signed

Karen Lynn-Dyson  
Contracting Officer Representative  
U.S. Election Assistance Commission

Gracia M. Hillman  
Chair  
U.S. Election Assistance Commission

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:33 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: No Cost Extension Request

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:32 AM -----



"John Weingart"  
<john.weingart@rutgers.edu>

12/22/2005 05:26 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov  
cc "Tom O'Neill" [REDACTED]  
Subject Re: No Cost Extension Request

Karen - Our request for a no-cost, reallocation of resources is based on (a) the fact that our personnel costs have already been higher than we anticipated and (b) the reality that keeping the project operating for at least nine months, instead of seven as planned, will require the participants to devote more time than anticipated. While we are not producing more product than originally promised, the time involved in our work continues to increase. Both Provisional Voting and Voter ID have proved to be very dynamic topics requiring us to continually monitor developments and update our data, analysis and evolving work products as we learn of new or revised information. As a result, despite the extension of the schedule, the staff and consultants on this project have had no "down" time. We anticipate this research, monitoring and revising to continue for the months added to the project, necessitating significantly more hours by all members of the project team than anticipated.

Our request asks for changes to three line items which I will address below on the assumption that the EAC response to our already-submitted Provisional Voting draft and to-be-submitted Voter ID draft will be sufficiently timely to enable us to complete our work on both topics by the end of February.

1. Eagleton Institute of Politics personnel: We originally budgeted \$110,695 (\$15,813 average per month) for Eagleton faculty, staff and graduate student assistants for the seven-month project from May 24, 2005-December 31, 2005. Our actual costs have been approximately \$14,500 more than that. In addition, we are anticipating needing another \$21,000 for personnel costs in January and February, calculated on the basis of 2/3 of the original monthly estimate. Therefore, we are asking to raise this line item from \$110,695 to approximately \$146,000.

2. Consultant Services: We originally budgeted \$79,50 (\$11,357 average per month) for consultant services which we have used to engage Tom O'Neill as the project manager. We anticipate no additional cost for the

025443

original contract period of May 24, 2005-December 31, 2005, but do anticipate needing his services during January and February at a slightly reduced rate of \$10,125 per month or \$20,250 total additional. Therefore, we are asking to raise this line item from \$79,500 to \$99,750.

3. Moritz School of Law: We originally budgeted \$84,744 (\$12,106 average per month) for staff and overhead for the May 24, 2005-December 31, 2005 period. We anticipate needing an additional \$23,171 (\$11,585 average per month) to support their time on this project in January and February. Therefore, we are asking to raise this line item from \$84,744 to \$107,915.

With these revisions, approximately \$22,000 of the EAC contract award to Eagleton would remain not yet allocated, primarily because the cost for the public hearings would have incurred Rutgers University overhead whereas the additional expenditures for consultants and the subcontract with Moritz do not.

I hope this provides you the information you need. While Rutgers is shutting down until January 3rd, I will be checking email at least every day or two.

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

klynndyson@eac.gov wrote:

>  
> John-  
>  
> I just had a more detailed conversation with our Deputy General  
> Counsel about Eagleton's no-cost extension.  
>  
> He indicates that we need a bit more information that will accompany  
> the material we will send to the Commissioners for a vote (hopefully  
> next week)  
>  
> We need to know the number of labor hours, the labor costs and a brief  
> description of the tasks to be performed by each of the staff who will  
> be working on the EAC contract until its completion.  
>  
> Since we have eliminated the public hearing ( a major contract  
> deliverable) it is unclear why staff labor hours and costs will  
> continue at the same level and rate.  
>  
> As always, thanks for your patience and prompt response.  
>  
>  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

025444

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:32 AM

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

Subject Fw: No Cost Extension Request

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:31 AM -----



"John Weingart"  
<john.weingart@rutgers.edu>

12/22/2005 05:26 PM

Please respond to  
john.weingart@rutgers.edu

To klyndyson@eac.gov

cc "Tom O'Neill" [REDACTED]

Subject Re: No Cost Extension Request

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025445

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Eagleton Institute of Politics  
(732)932-9384, x.290

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

025448

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:32 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Request for No-Cost Extension-corrected

This e-mail should be a part of the no -cost extension file and/or the financial file you create for the Eagleton contract.

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

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:29 AM ---



"John Weingart"  
<john.weingart@rutgers.edu>  
12/16/2005 01:25 PM  
Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov  
cc  
Subject Re: Request for No-Cost Extension-corrected

Karen - At this time, we anticipate reallocating funds primarily from the public hearings line item and spending approximately \$35,500 more than originally budgeted on personnel, \$23,250 more on the subcontract with Ohio State and \$20,250 more on consultants. There are other additional variances but they are not significant (e.g. less on honoraria, less on travel, and more on general operations such as phone expenses). Let me know if you need additional detail or information.

Thanks, John

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

klynndyson@eac.gov wrote:

>  
> John-  
>  
>  
> Quick question-  
>  
> How much money do you anticipate will be re-allocated from the  
> original line items outlined in the contract to other project costs?  
>

025447

> Thanks  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123  
>  
>  
>  
> \*"John Weingart" <john.weingart@rutgers.edu> \*  
>  
> 11/30/2005 05:05 PM  
> Please respond to  
> john.weingart@rutgers.edu  
>  
>  
>  
> To  
> "Karen Lynn-Dyson" <klynndyson@eac.gov>  
> cc  
> "Tom O'Neill" <[REDACTED]>  
> Subject  
> Request for No-Cost Extension-corrected  
>  
>  
>  
>  
>  
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>  
> --  
> -- John Weingart, Associate Director  
> Eagleton Institute of Politics  
> (732)932-9384, x.290  
>  
>  
>

025448

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:30 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: No Cost Paperwork

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:28 AM -----



Tamar Nedzar/EAC/GOV

12/12/2005 06:08 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
Subject No Cost Paperwork

Hi Gavin,

This is the document I prepared for the no-cost extension.

Thank you,  
Tamar Nedzar  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
(202) 566-2377  
<http://www.eac.gov>



[TNedzar@eac.gov](mailto:TNedzar@eac.gov) sf30.pdf

025440

<b>AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT</b>				1. CONTRACT ID CODE	PAGE OF PAGES
2. AMENDMENT/MODIFICATION NO.		3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY		CODE	7. ADMINISTERED BY (If other than Item 6)		CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)			(X)	9A. AMENDMENT OF SOLICITATION NO.	
				9B. DATED (SEE ITEM 11)	
				10A. MODIFICATION OF CONTRACT/ORDER NO.	
				10B. DATED (SEE ITEM 11)	
CODE		FACILITY CODE			

**11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS**

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended,  is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  
 (a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor  is not,  is required to sign this document and return \_\_\_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR		16B. UNITED STATES OF AMERICA	
15C. DATE SIGNED		16C. DATE SIGNED	
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

## INSTRUCTIONS

Instructions for items other than those that are self-explanatory, are as follows:

- (a) Item 1 (Contract ID Code). Insert the contract type identification code that appears in the title block of the contract being modified.
- (b) Item 3 (Effective date).
- (1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.
  - (2) For a supplemental agreement, the effective date shall be the date agreed to by the contracting parties.
  - (3) For a modification issued as an initial or confirming notice of termination for the convenience of the Government, the effective date and the modification number of the confirming notice shall be the same as the effective date and modification number of the initial notice.
  - (4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.
  - (5) For a modification confirming the contracting officer's determination of the amount due in settlement of a contract termination, the effective date shall be the same as the effective date of the initial decision.
- (c) Item 6 (Issued By). Insert the name and address of the issuing office. If applicable, insert the appropriate issuing office code in the code block.
- (d) Item 8 (Name and Address of Contractor). For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a previous modification.
- (e) Item 9, (Amendment of Solicitation No. - Dated), and 10, (Modification of Contract/Order No. - Dated). Check the appropriate box and in the corresponding blanks insert the number and date of the original solicitation, contract, or order.
- (f) Item 12 (Accounting and Appropriation Data). When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries.
- (1) Accounting classification \_\_\_\_\_  
Net increase \$ \_\_\_\_\_
  - (2) Accounting classification \_\_\_\_\_  
Net decrease \$ \_\_\_\_\_
- NOTE: If there are changes to multiple accounting classifications that cannot be placed in block 12, insert an asterisk and the words "See continuation sheet".
- (g) Item 13. Check the appropriate box to indicate the type of modification. Insert in the corresponding blank the authority under which the modification is issued. Check whether or not contractor must sign this document. (See FAR 43.103.)
- (h) Item 14 (Description of Amendment/Modification).
- (1) Organize amendments or modifications under the appropriate Uniform Contract Format (UCF) section headings from the applicable solicitation or contract. The UCF table of contents, however, shall not be set forth in this document
  - (2) Indicate the impact of the modification on the overall total contract price by inserting one of the following entries:
    - (i) Total contract price increased by \$ \_\_\_\_\_
    - (ii) Total contract price decreased by \$ \_\_\_\_\_
    - (iii) Total contract price unchanged.
  - (3) State reason for modification.
  - (4) When removing, reinstating, or adding funds, identify the contract items and accounting classifications.
  - (5) When the SF 30 is used to reflect a determination by the contracting officer of the amount due in settlement of a contract terminated for the convenience of the Government, the entry in Item 14 of the modification may be limited to --
    - (i) A reference to the letter determination; and
    - (ii) A statement of the net amount determined to be due in settlement of the contract.
  - (6) Include subject matter or short title of solicitation/contract where feasible.
- (i) Item 16B. The contracting officer's signature is not required on solicitation amendments. The contracting officer's signature is normally affixed last on supplemental agreements.

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:29 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Request for No-Cost Extension-corrected

Karen Lynn-Dyson  
Research Manager  
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1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
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"John Weingart"  
<john.weingart@rutgers.edu>

11/30/2005 05:05 PM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>  
cc "Tom O'Neill" [REDACTED]  
Subject Request for No-Cost Extension-corrected



Extension Justification.doc Karen - There were two typos on the copy I just sent. Please use the attached instead. To minimize confusion, I dated this document December 1st (the first one says November 30). Thanks, John

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

025452

## **EAGLETON INSTITUTE OF POLITICS**

### **Request to the U.S. Election Assistance Commission for a No-Cost Extension and Reallocation of Funds**

December 1, 2005

#### **Why we need a no -cost extension**

The original work schedule called for EAC to publish in mid-October voluntary guidance and/or recommended best practices for provisional voting based on our research. In making that time estimate, we did not provide sufficient time for the EAC to review and consider the draft reports that would form the basis for that publication. The draft was complete in August, but the EAC's schedule did not permit us to brief the commissioners and staff until early September. We did not receive EAC comments until October, making it impossible to complete the work on the original schedule. Taking account of those comments and guidance from EAC required several weeks. The EAC did not receive our final draft report and recommendations for best practices until late November. We are now awaiting the EAC's comments on that final draft, which we have been told to expect in January.

The additional time required to complete the work on provisional voting has delayed the completion of our analysis of Voter Identification issues. The draft report on that topic will be submitted to the EAC in mid January.

Because the EAC has decided to issue recommendations for best practices on these topics, rather than voluntary guidance, we will finish the work within two months of the original completion date since the adoption process will be shorter. Note that meeting this schedule is dependent on the time needed by the EAC to review our work.

This extension will entail additional personnel time but, since no public hearings on "best practices" are required, if the EAC does not object, funds originally allocated for the hearings would be available for transfer to support the additional staff and consultant time necessary to complete the work.

#### **When will work be completed and funds fully expended?**

As shown on the attached schedule, work on this contract will be completed in three phases. The EAC will receive our final report and recommendations for best practices in provisional voting during the week of January 23, 2006 (assuming that we receive the EAC's comments on the draft report submitted on November 28 by January 9).

We will submit our draft report, alternative approaches, and compendium of statutes, regulations, and litigation on Voter Identification Issues during the week of January 16, 2006. If the EAC is able to return comments to us no later than the week of January 30, we will have submit the final report and recommendations for best practices on Voter Identification to the EAC during the week of February 13.

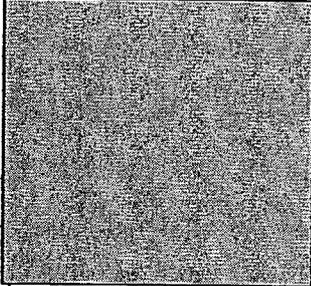
The total project budget is \$560,002. As of October 31st, the EAC has been invoiced for \$259,081.79; the balance remaining is \$300,920.21. We anticipate that the project will be complete and the balance of funds fully expended by February 28, 2006. The final invoice for the contract will be submitted to the EAC within 75 days of the close of the project.

REVISED SCHEDULE FOR  
 November 2005 - February 2006  
 November 10, 2005  
 Assumes no guidance document, only analysis and recommended best practices

DATE	Project Management	Provisional Voting	Voter ID
Week of 10/31		Review draft report to EAC (Team)  Submit comments on report (Team)	Voter ID Research to TV
Week of 11/7	Status reports to JD for October tasks (all)	Redraft report (TON)  Review and approve report (Team)  Final draft report (TON)	Research continues (TV)
Week of 11/14	Submit monthly progress report (JD)	Submit report to Project Team for comments (TON)	Research continues (TV)

Week of 11/21		Project team comments received  Submit report to EAC for review and to PRG for information (TON, JW)	Complete data collection for Voter ID analysis. (TV)
Week of 11/28		EAC review	Draft report on Voter ID analysis (TV)
Week of 12/5	Status reports to JD for November tasks (all)	EAC review	Internal review (PT)
Week of 12/12	Submit monthly progress report (JD)	EAC review	Revise draft (TV)  Draft alternatives (TON)  Review and comment on alternatives (PT)
Week of 12/19		EAC review	Complete draft report and alternatives (TV, TON)
Week of 12/26		EAC review	Review draft report and alternatives (PT)

Week of 1/2/06	Status reports to JD for December tasks (all)	EAC review	Report and alternatives to PRG for review
Week of 1/9/06		Receive comments from EAC and revise report as needed	PRG meets and comments  Revise (TV & TON)
Week of 1/16/06	Submit monthly progress report (JD)	Project team reviews and approves revised report	Submit draft report, alternatives and compendium to EAC  EAC reviews
Week of 1/23/06		Finalize analysis and best practices and submit to EAC for publication and further action as appropriate	EAC review continues
Week of 1/30/06			Comments from EAC  Revise (TV & TON)

Week of 2/6/06	Status reports to JD for January tasks (all)		Review and approve revised report and recommendations for best practices (PT)
Week of 2/13/06	Submit monthly progress report (JD)		Submit report and best practices to EAC for publication and further action as appropriate
Week of 2/20/06	<p>FINAL status reports to JD for all tasks (all)</p> <p>Final fiscal report/invoice to EAC 75 days later</p> <p>PROJECT ENDS</p>		

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:29 AM

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:27 AM -----



"Johanna Dobrich"  
<jdobrich@eden.rutgers.edu>

To klynnnyson@eac.gov

11/28/2005 11:17 AM

cc

Subject Final Best Practices Document



Best Practices FINAL 11.23.05.doc Final Best Practices\_\_attachment Two.xls Dear Ms. Karen Lynn-Dyson:

Attached please find the final draft 'Best Practices to Improve Provisional Voting Report' completed by the Eagleton Institute of Politics, and Mortiz College of Law.

Please note that our report has two attachments, the first of which is appended directly within the text of the report, and the second of which is a separate excel document. In addition to this electronic submission I will be sending you a hard copy, via FedEx of these materials later today.

Please let me know if you have any difficulty opening the files.

Sincerely,

Johanna Dobrich

--

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**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

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Submitted by

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

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The Moritz College of Law, The Ohio State University

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Report to the  
U. S. Election Assistance Commission

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Best Practices to Improve Provisional Voting

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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.<sup>1</sup>

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.<sup>2</sup> 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 the ballot must be cast in order to be counted.<sup>4</sup>

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, include first-time voters who cannot provide identification, as required under HAVA, and voters who were

<sup>1</sup> 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.

<sup>2</sup>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](http://www.electioncenter.org).

<sup>4</sup>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 (6<sup>th</sup> 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.

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challenged at the poll.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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."<sup>8</sup>)

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.

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.<sup>9</sup>

<sup>5</sup> 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.)

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

<sup>9</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

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- The percentage of the total vote cast as provisional ballots averaged more than 2% (2.17%) in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

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Those voting with provisional ballots in experienced states were enfranchised more frequently than those in the new states, another indication that there is room for improvement in provisional balloting procedures.<sup>10</sup> 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 the "new" states with information on more effective administration of provisional voting. EAC could also consider convening a national meeting for state and county election officials to share experiences and best practices from their own jurisdictions.

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

<sup>10</sup> Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's 6-day time frame for processing the provisional ballots was very challenging and unrealistic. To overcome this challenge, the entire department's employees were mobilized to process provisional ballots." (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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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.<sup>11</sup>

- 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. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

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Other influences decreasing consistency among the states include:

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- 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.<sup>12</sup>

- 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 (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.

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- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>13</sup> In states using provisional voting for the first time, states with

<sup>11</sup> 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.

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<sup>12</sup> See Table 2 in Appendix 2 for information on the verification method used in each state.

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<sup>13</sup> 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.

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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.<sup>14</sup>

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- 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.<sup>15</sup>

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Variation With-in States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.<sup>16</sup> Reacting to the lack of consistency within states, 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."<sup>17</sup>

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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.

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<sup>14</sup> 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."

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<sup>15</sup> 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.

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<sup>16</sup> 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 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.

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<sup>17</sup> Report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, p.16. The report observed that, "...different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated."

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

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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.<sup>19¶</sup>

¶  
The Election Day Study found that jurisdictions with lower education and income tend to report more inactive voter registrations, lower voting turnout, higher number of provisional ballots case, lower average number of poll workers per polling place and greater percentage of inadequately staffed polling places. These differences in demographics and resources produce different experiences with provisional voting.<sup>19¶</sup>

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**Effectiveness of Provisional Voting**

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology 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.

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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.

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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.

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**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

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What is known is

**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.

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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, might be 40% to 50% (ballots counted/votes lost). Whatever the precise figure, it ... [8]

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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, might be 40% to 50% (ballots counted/votes lost). Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

Legislative Response

Indeed, several states<sup>20</sup> 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.

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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.<sup>21</sup>

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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.

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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.

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This litigation was significant nonetheless.

\* 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.

<sup>20</sup> 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.

<sup>21</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the entire department's employees were mobilized to process provisional ballots." The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots." In a close, contested election, "duplicate" ballots would doubtless receive long and careful scrutiny." See Appendix 7, GAO "Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," September 2005. (GAO Report-05-997)

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- 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.

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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.

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**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. 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.

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**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 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.

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**Self-evaluation of Provisional Voting –4 Key Questions**

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 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?

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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.

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**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.

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**The Importance of Clarity**

The EAC should emphasize above all else the importance of clarity in the rules governing every stage of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result— well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."<sup>22</sup>

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.

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<sup>22</sup> The Century Foundation, Balancing Access and Integrity, Report of the Working Group on State Implementation of Election Reforms, July 2005.

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.<sup>23</sup> 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.<sup>24</sup>
- 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.<sup>25</sup> Recent legislation in Arizona indicates that the EAC'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.<sup>26</sup>

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**A. Registration and Pre-Election Information for Voters**

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

1. If states require identification at the time of registration, the kind of IDs required should be stated precisely and clearly and be publicly and widely available in a form that all voters can understand. For example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."<sup>27</sup>

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<sup>23</sup> See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

<sup>24</sup> 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.

<sup>25</sup> *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 774 (6<sup>th</sup> Cir. 2004)

<sup>26</sup> *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.

<sup>27</sup> 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.

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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.<sup>28</sup>

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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.

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**B. At the Polling Place**

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>29</sup> After the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>30</sup> Such statutory direction could help other states ensure uniform instruction of poll workers.

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2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>31</sup> 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

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<sup>28</sup> The Century Foundation, op. cit.

<sup>29</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>30</sup> 2005 N.M. Laws 270 page no. 4-5.

<sup>31</sup> Voting Order, November 2, 2004, Superior Court of New Jersey, Law Division, Middlesex County.

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number of provisional ballots actually cast in recent elections. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>32</sup>

- 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.<sup>33</sup>

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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."<sup>34</sup> Nonetheless, the *Panio v. Sutherland*<sup>35</sup> 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.

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- 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 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

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<sup>32</sup> 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).

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<sup>33</sup> 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.

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<sup>34</sup> The Century Foundation, op. cit.

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<sup>35</sup> 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.

<sup>37</sup> In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104. Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1)

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

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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.<sup>37</sup>

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2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct.<sup>38</sup> 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.
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.<sup>39</sup>
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.<sup>40</sup>

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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.

<sup>38</sup> 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."

<sup>39</sup> Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

<sup>40</sup> 8 ccr 1505-1, at 26.5.4, adopted august 4, 2005. See also 1-2-509(3) C.R.S.

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- 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 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.

### 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.

**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.

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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 to evaluate the provisional ballot process within the broader context of the electoral system. Pending such a review, the EAC can recommend that states take the following actions.

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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:

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- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (jack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.

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- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.

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- Measures of variance among jurisdictions.

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- Number of poll workers trained in administration of provisional voting by polling place

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- Number of jurisdictions posting information on provisional voting in the polling place

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- Time required to evaluate ballots by jurisdiction

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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**

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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?

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.
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.

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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.

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## 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 categories analyzed here are:

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

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Comment [01]:

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.

Please note that:

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

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

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

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

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New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting<sup>41</sup> 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:

Comment [o2]: It would be useful here to insert a table showing our classification as old or new.  
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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.

Comment [o3]: Under this criterion, how did Florida become an “old” state?

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.

<sup>41</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

**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>		
<b>26</b>	<b>18</b>	<b>7</b>

Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>42</sup> 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.

<sup>42</sup> “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>

**Table 2**  
**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>		
<b>16</b>	<b>27</b>		<b>8</b>

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.

Comment [o4]:

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 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as “out-of-precinct.” States that invalidated such ballots were categorized as “In-precinct only.”



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*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>	<i>Idaho</i>	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	
<i>Wisconsin</i>	Michigan	West Virginia	Georgia	
<i>Wyoming</i>	Minnesota		Kentucky	
	Mississippi		Missouri	
	Nebraska		Montana	
	New Mexico		North Dakota	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
<u>9</u>	<u>14</u>	<u>8</u>	<u>15</u>	<u>5</u>

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

Comment (05): Again, this would work better as a table.

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.

**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.*

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

**Data Collection**

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

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

<b>Table 6</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
<u>California</u>	<u>Alabama</u>
<u>District of Columbia</u>	<u>Alaska</u> <sup>45</sup>
<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> <sup>46</sup>	<u>Idaho</u>
<u>Missouri</u>	<u>Illinois</u>
<u>Montana</u>	<u>Kentucky</u>
<u>Nebraska</u> <sup>47</sup>	<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>	
<b>26 States</b>	<b>25 States</b>

<sup>45</sup> 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.

<sup>46</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>47</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.



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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, might be 40% to 50% (ballots counted/votes lost)\*. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

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\* Another interpretation of the data should be considered. 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.

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

ATTACHMENT 2 -- Data

Wisconsin	EDR	0.00	32.00
<u>States</u>	<u>PV Status Pre-HAVA</u>	<u>PV % of the Vote</u>	<u>PV % of the vote Counted</u>
Wyoming	EDR	0.01	25.00

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**Table 2 -- Characteristics of State Provisional Voting Systems**

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

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

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

**Table 3 -- Information for Voters**

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

Provided on State Elections Website?					
<u>States</u>	<u>PV Requirements</u>	<u>VID Requirements</u>	<u>Registration Verification</u>	<u>Precinct Verification</u>	<u>Notification of Voters</u>
West Virginia	Yes	No	No	No	Phone
Wisconsin	Yes	Yes	No	No	Phone
Wyoming	Yes	No	No	No	Website

Table 4 -- Litigation and Statues

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

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

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:28 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Provisional Voting Report Status and Request for Advice

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

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:27 AM ---



"John Weingart"  
<Johnwein@rci.rutgers.edu>

11/23/2005 01:47 PM

Please respond to  
John.Weingart@rutgers.edu

To klynndyson@eac.gov  
cc [REDACTED], rmandel@rci.rutgers.edu  
Subject Re: Provisional Voting Report Status and Request for Advice

Thanks Karen. Given the likely EAC review schedule, I think we'll take a few more days to finetune our draft Provisional Voting report and submit it to you early next week. Also, by late next week, we'll give you a proposed revised schedule and revised budget. Thanks for you quick feedback. Hope you have a great Thanksgiving.

John

> John-  
>  
> To follow up on the voice mail message I've just left you-  
>  
> EAC agrees with a Best Practices approach rather than the creation of a  
> Guidance document as a result of this work.  
>  
> EAC has major commitments and project deliverables related to releasing  
> its Voluntary Voting Systems Guidelines by the end of the calendar year. A  
> January date for an EAC review of your document is more realistic.  
>  
> The Commissioners will have to review and provide input relating to what  
> steps, if any, they will want Eagleton to take beyond the initial creation  
> of the agreed-upon voter ID and provisional voting documents.  
>  
> I will forward your inquiry regarding the process for requesting a  
> no-cost extension to our contracting folks.  
>  
> EAC will need further information regarding how you anticipate  
> re-allocating funds, in light of fewer public hearings.  
>  
> Hope this helps.  
>  
> regards-  
> b  
>

025496

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

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

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

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:27 AM

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

Subject Fw: Provisional Voting Report Status and Request for Advice

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:26 AM -----



"John Weingart"  
<john.weingart@rutgers.edu>  
11/15/2005 10:53 AM  
Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>, "Ruth Mandel"  
<rmandel@rci.rutgers.edu>  
cc "Tom O'Neill" [REDACTED]  
Subject Provisional Voting Report Status and Request for Advice



KeyDatesRev1110.doc Karen - We would like to talk with you about the process and schedule for completing our work in a way that is most useful to the EAC. I am attaching a draft timeline for the completion of this work and listing below five specific questions we need to resolve as quickly as possible. I would appreciate it if you would call me to discuss how best to address these matters - whether by telephone or by coming to meet in Washington.

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

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

QUESTIONS:

1. Does the EAC agree with the approach described above to make all recommendations in the form of Best Practices rather than Guidance?
2. How long will it take the EAC to review and return comments on our draft Provisional Voting document? Is our attached revised schedule

025498

realistic in anticipating EAC comments no later than the week of December 12<sup>th</sup> on the report we send you at the end of this week?

3. After we revise our report on Provisional Voting to reflect any comments we receive from the EAC, and follow a similar process for our report on Voter Identification, what further steps would the Commission like us to take? Would you want us to conduct a review with your Board of Advisors and/or hold public hearings even though these steps are, we understand, required only for a Guidance Document? A review by the Board of Advisors would offer the opportunity to solicit suggestions for Best Practices from its members, thus strengthening the document and building a constituency for their adoption. (The attached draft timeline does not include such additional reviews.)

4. In any case, we will need a no-cost extension to the contract to carry us past December 31<sup>st</sup> . How do we make that request?

5. Assuming that we conduct fewer public hearings than we had anticipated, can we reallocate funds we had budgeted for that purpose to cover the higher than anticipated personnel and consultant costs we will be incurring after the first of the year?

We look forward to discussing these matters with you.

Thanks, John

--

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

025499

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:24 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Meeting with EAC and Ballot Design

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:22 AM -----



"Tom O'Neill"

<[REDACTED]>

07/19/2005 06:07 PM

To klynndyson@eac.gov  
cc

Subject Meeting with EAC and Ballot Design

Karen, This email addresses two topics.

### **1. Meeting with EAC**

At the end of August, we will have a draft of the Analysis and Alternatives paper for provisional voting, and we will have developed an outline of the alternatives to be described in the Preliminary Guidance Document (PGD). Before beginning to draft the PGD, we would benefit from a discussion with EAC staff and, perhaps, the commissioners. We would like to explore, through you, the scheduling of a meeting for that purpose, and suggest the date of August 26 at your offices in Washington. Several of us would attend and others might participate by teleconference.

### **2. Design of Provisional Ballots**

In our teleconference a week ago, Tom Wilkey asked if we were collecting actual provisional ballots from around the country to assess their design. A collection of provisional ballots is not a deliverable under our contract, but at your request we have estimated what such an effort might require.

025500

The goal would be to collect ballots, examine them to determine how well they conform to any ballot design criteria established in state legislation or regulations and possibly evaluate them against objective design standards of clarity and ease of use.

If state regulations or legislation specify the detailed design of provisional ballots, collecting a sample ballot and envelope from each state would be feasible. If states have delegated the details of design to county or other levels of government, the collection process would probably not be worth the substantial time and expense involved in contacting more than 3,000 jurisdictions.

### Step One -- Feasibility

A prudent approach to this work would begin with a feasibility study. It would determine how many states use a uniform provisional ballot throughout the state and how many allow significant variation in design among counties or other jurisdictions. Working with the statutes and regulations now being collected by Moritz, we would also determine if state statutes or regulations specify the details of the design of provisional ballots. This work would provide the information needed to decide if the project is doable at reasonable cost. The feasibility study would probably require 5 to 10 days of research time. On a time-and-materials basis, including overhead charges, the cost of the feasibility analysis would be in the range of \$2,500 – \$5,000.

### Step Two -- Collection and Analysis

If EAC determines on the basis of our feasibility report that the project is feasible, collecting the provisional ballots and envelopes would require 3 – 4 weeks of research, collection and analysis at a cost of \$6,000 -- \$9,000 (with overhead). The research process would include:

- Determining the appropriate official in each state to contact,
- Sending each official a letter requesting a provisional ballot and envelope as used in federal elections,
- Making up to 3 follow-up calls.
- Compiling and categorizing the ballots
- Comparing the actual ballots to any specifications contained in state statutes or regulations.

The deliverables would be:

- The collection of ballots,
- A compendium of statutory or regulatory specifications of ballot design,
- Classification of ballots according to the major design principles reflected in their layout and appearance.

### Possible Step 3 – Evaluation of Provisional Ballot Design

The EAC might also wish to consider a logical, third step. Once the ballots are collected, Eagleton could arrange to evaluate provisional ballots for clarity and user-friendliness. The review could be done by one or more focus groups that Eagleton would empanel, or it could be conducted by a design firm that would review the ballots and make recommendations for principles of good design that could be issued as guidance to the states. We have not identified an individual designer or firm with credentials in this field, but could do so as part of the feasibility study. Eagleton could do the focus group in-house at relatively modest cost.

Please let me know if you would like us to go further with this assignment.

Tom O'Neill

025502

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:23 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Peer Review Group

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:21 AM -----

Carol A. Paquette/EAC/GOV  
07/08/2005 05:13 PM

To Juliet E. Thompson/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Fw: Peer Review Group

Julie -

I don't remember saying much of anything but a few pleasantries to Tom in New York. Did you talk to him about this topic? I'm really at a loss on this. (Maybe I'm having an extended senior moment.)

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

----- Forwarded by Carol A. Paquette/EAC/GOV on 07/08/2005 05:07 PM -----



"Tom O'Neill"

07/08/2005 03:41 PM

To "Paquette, Carol" <cpaquette@eac.gov>  
"Laura Williams" <laura@rutgers.edu>, "Weingart,  
John" <john.weingart@rutgers.edu>, "reed, ingrid"  
cc <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.

025505

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, 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.

025504

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

025505

**Deliberative Process  
Privilege**

**REVISED  
PROPOSED MEMBERS OF PEER REVIEW GROUP**  
July 6, 2005

**Role of the Peer Review Group**

Members of the Peer Review Group will review the research design for the project, including the survey of local election officials, the analysis of Voter ID regime on turnout, the state-by-state narrative of developments in provisional voting and voter identification, and the compilation and analysis of statutes, administrative regulations, and case law affecting provisional voting and voter identification. They will also review the report on Analysis and Alternatives. They may review the draft of the Preliminary Guidance Document before it goes to the Board of Advisors for comment.

Members of the group will be respected authorities in their fields and represent a range of opinions and perspectives, although their views on policy will be less important to the study than their views on the quality of the research on which policy recommendations are based.

Ideally, the group would meet once, but even that may not be possible to arrange given the tight time period for the project, the demanding schedules of the members, and their wide dispersal across the county. They will function largely by reviewing written work and making written comments on it. The timing of their involvement is indicated on the work plan.

**R. Michael Alvarez, Ph.D.**

Professor of Political Science  
California Institute of Technology  
rma@hss.caltech.edu  
626-395-4422

Alvarez has taught political science at Caltech since 1992. He received his B.A. in political science from Carleton College, his M.A. and Ph.D. from Duke University. Alvarez focuses on the study of electoral politics. He has published many articles on electoral behavior and public opinion. Support for his research has come from the National Science Foundation, The IBM Corporation, the Carnegie Corporation, of New York, and the Knight Foundation. Alvarez edits the Analytical Methods for Social Research book series and is on the editorial boards of a number of academic journals. He is Co-Director of the Caltech-MIT Voting Technology Project

**Guy-Uriel E. Charles**

Associate Professor  
School of Law  
University of Minnesota  
342 Mondale Hall  
229-19th Avenue South  
Minneapolis, MN 55455  
612-626-9154  
gcharles@umn.edu

Charles teaches and writes on election law, law and politics, and race. He received his B.A. degree in Political Science, cum laude from Spring Arbor University and his J.D. from the University of Michigan Law School, where he was Editor-in-Chief of the Michigan Journal of Race & Law. He is completing a PhD in political science from the University of Michigan.

**Brad Clark**

Professor of Law  
George Washington University School of Law

Clark received his B.A. in Political Science from Florida State University and his J.D. from Columbia Law School in 1985. He served as a law clerk to the Judge Robert H. Bork on the US Court of Appeals and went on to clerk for Justice Antonin Scalia on the Supreme Court. He has been on the faculty at George Washington University Law School for 12 years, where he has taught Constitutional Law, Federal Courts, and Civil Procedure.

**Pamela Susan Karlan**

Montgomery Professor of Public Interest Law  
Stanford Law School  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
(650) 725-4851  
karlan@stanford.edu

Formatted

Karlan's principal subjects include legal regulation of the political process. She earned her BA, MA, and JD at Yale University, and was previously a Professor at the University of Virginia. She serves on the California Fair Political Practices Commission and is a Cooperating Attorney with the NAACP Legal Defense and Education Fund. She has also been a lecturer at the FBI National Academy. Among her publications, she is a co-author of *When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000.*

**Martha E. Kropf, Ph.D.**

Assistant Professor of Political Science  
University of Missouri-Kansas City  
816-235-5948; KropfM@umkc.edu

Kropf has been on the faculty at Missouri since 1999. She received her BA Summa Cum Laude, Phi Beta Kappa from Kansas State University and her PhD in Political Science from American University. Her work concentrates on Research Methods, Urban Politics, American Government, and Political Behavior. Before joining the faculty at Missouri, she was Project Coordinator at the University of Maryland Survey Research Center. She has published recent on undervoting in presidential elections, and on invalidated ballots in the 1996 presidential election, and on the incremental process of election reform in Missouri.

Deleted: Deborah Goldberg, Ph.D.

Program Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
161 Avenue Of The Americas, 12th Floor  
New York, NY 10013  
212-998-6730  
Goldberg supervises the Democracy Program's litigation, scholarship, and public education. She was the principal author of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and was lead counsel to the intervenor in the Supreme Court case *Nixon v. Shrink Missouri Government PAC*. She serves on the Steering Committee of a coalition to restore voting rights to persons with past felony convictions. Goldberg is a graduate of Harvard Law School. Before joining the Brennan Center, she was in private practice. She holds a Ph.D. in philosophy and taught ethics at Columbia University.

**Daniel H. Lowenstein**

Professor of Law  
School of Law  
University of California, Los Angeles  
Box 951476,  
Los Angeles, CA 90095-1476  
(310) 825-4841

Among other courses, Lowenstein teaches Election Law. His textbook, *Election Law* has become a standard in the field. He earned his A.B. at Yale and his LL.B. at Harvard. While working for California's Secretary of State he was the main drafter of the *Political Reform Act* in 1971. He was the first chair of the Fair Political Practices Commission. He has served on the national governing board of Common Cause. He has written on such topics as campaign finance, redistricting, bribery, initiative elections, and political parties.

**John F. Manning**

Professor  
Harvard Law School

Now at Harvard, Manning was appointed Assistant Attorney General for the Office of Legal Counsel by President Bush in 2001. He had been Professor of Law at Columbia Law School. Had had served as Assistant to the Solicitor General of the United States and was an Attorney-Adviser in the Office of Legal Counsel at the Department of Justice during the administrations of President George H. W. Bush and President Reagan. He is a graduate of Harvard College and Harvard Law School.

**Tim Storey**

Program Principal  
Legislative Management Program  
National Conference of State Legislatures  
7700 East First Place  
Denver, CO 80230  
303-364-7700  
or  
444 North Capitol Street, N.W., Suite 515  
Washington, D.C. 20001  
202-624-5400

**Peter G. Veniero, Esq.**

Counsel  
Sills, Cummis, Epstein and Gross, PC  
One Riverfront Plaza  
Newark, New Jersey 07102  
Tel: 973- 643-7000

Veniero chairs the firm's Appellate Practice Group. He earned his B.A. at Drew University, Phi Beta Kappa, and his J.D. (with honors) at the Duke University School of Law. In 1999, he was appointed a justice of the New Jersey Supreme Court, where he served for 7 years before re-entering private practice. Before his appointment to the Supreme Court, he served as New Jersey's Attorney General, and in that capacity oversaw the state's election laws. He also served as Chief of Staff and Chief Counsel to Governor Christine Todd Whitman.

**Plus one or two former, senior election officials to be suggested by the EAC**

**Deleted: Wade Henderson, Esq.** ¶  
Executive Director ¶  
Leadership Conference on Civil Rights ¶  
1629 K Street, NW, 10<sup>th</sup> Floor ¶  
Washington, DC 20006 ¶  
Wade Henderson is the Executive Director of the LCCR and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), and leads the organizations' work on issues involving nationwide election reform. He is a graduate of Howard University and the Rutgers University School of Law. During its over 50 years of existence, LCCR has worked to redefine civil rights issues in broad and inclusive ways. Today, it includes over 180 national organizations. Previously Henderson served as Washington Bureau Director of the NAACP. He began his career as a legislative counsel of the ACLU. ¶

¶  
**Kay Maxwell** ¶  
President ¶  
League of Women Voters of the U.S. ¶  
1730 M Street NW, Suite 1000 ¶  
Washington, DC 20036-4508 ¶  
202-429-1965 ¶

Kay J. Maxwell has been a member of the League since 1976. She attended Smith College and earned a B.A. in International Relations from the University of Pennsylvania. She has conducted civic participation training for women leaders in Bosnia, Israel, the West Bank, Rwanda, Kuwait and Jamaica. She has also served as vice president at the International Executive Service Corps (IESC), an international economic development organization. She is a board member of DC Vote, and the New Voters Project. ¶

**Deleted:** ¶

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:23 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Revised Work Plan --Gantt Chart

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:21 AM -----



"Tom O'Neill"

[REDACTED]  
06/20/2005 12:19 PM

To klynndyson@eac.gov  
cc

Subject RE: Revised Work Plan --Gantt Chart

Karen:

I just downloaded the same file I sent you. It is formatted for printing at 11x17, and I had no difficulty magnifying it to that size on my computer screen. I don't have a printer than handles paper that size so I can't print it myself. The only other format I have available is a Microsoft project file, and that is attached. (Although in my experience pdf files are the easiest to handle.)

Tom

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]  
**Sent:** Monday, June 20, 2005 12:04 PM  
**To:** [REDACTED]  
**Cc:** lotero@eac.gov  
**Subject:** Re: Revised Work Plan --Gantt Chart

Happy Monday, Tom

The EAC Research Associate and I are having difficulty reading the Gantt chart you sent and need it sent in a format in which we can enlarge it to at least 11X 17.

I'd like to be able to share this with the Commissioners later on this afternoon, but understand if your not able to convert it by then.

Thanks



GanttChartJune-Aug GanttChartJune-Aug GanttChartMonthly.mpp  
Karen Lynn-Dyson

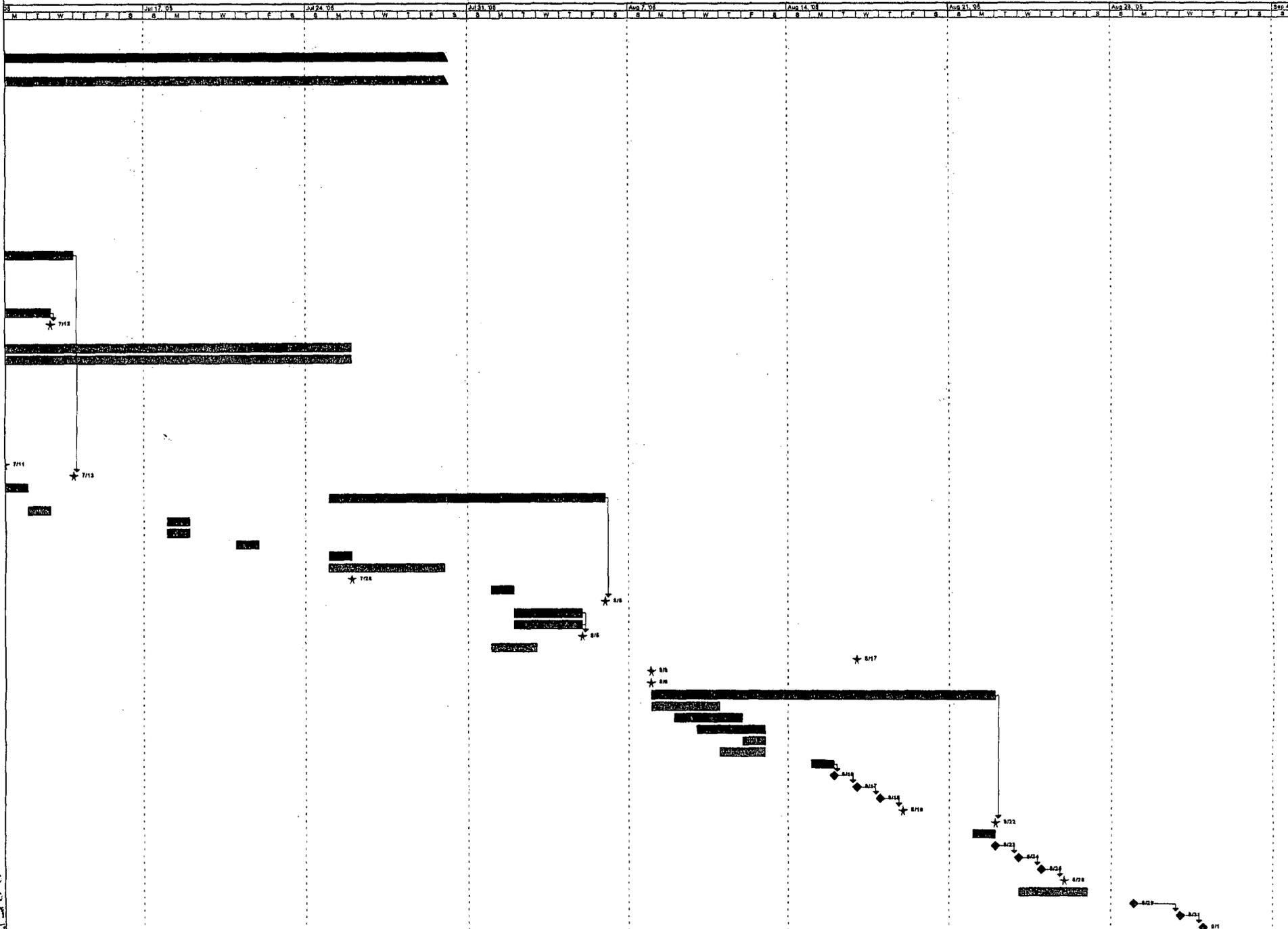
025509

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

025510



Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey



025512

## Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey

ID	Task Name	Duration	Start	Finish	July							August			
					6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7	
1	Status reports for August tasks	5 days?	Mon 9/5/05	Fri 9/9/05											
2	August Progress Report to EAC	0 days	Fri 9/2/05	Fri 9/2/05											
3	Draft PGD to EAC for review	0 days	Tue 9/6/05	Tue 9/6/05											
4	Receive EAC commnets; revise	5 days?	Mon 9/12/05	Fri 9/16/05											
5	Submit Draft GD to EAC BOA & SB	0 days	Fri 9/16/05	Fri 9/16/05											
6	Draft Analysis & Alts. Report	5 days?	Mon 9/5/05	Fri 9/9/05											
7	Complete Compendium	5 days?	Mon 9/12/05	Fri 9/16/05											
8	Arrange December Public Hearing	5 days?	Mon 9/12/05	Fri 9/16/05											
9	Review draft report	3 days?	Mon 9/19/05	Wed 9/21/05											
10	Revise draft report	3 days?	Wed 9/21/05	Fri 9/23/05											
11	Status reports for Septemeber tasks	5 days?	Mon 10/3/05	Fri 10/7/05											
12	September Progress Report to EAC	0 days	Mon 10/3/05	Mon 10/3/05											
13	Meet EAC BOA/SB	5 days?	Mon 10/3/05	Fri 10/7/05											
14	Revise GD	1 day?	Fri 10/7/05	Fri 10/7/05											
15	Draft GD to EAC for publication	5 days?	Mon 10/10/05	Fri 10/14/05											
16	Publication	0 days	Fri 10/14/05	Fri 10/14/05											
17	Public Hearing on GD	5 days?	Mon 10/17/05	Fri 10/21/05											
18	Report Analysis & Alts. To PRG	2 days?	Mon 10/3/05	Tue 10/4/05											
19	PRG Comments	0 days	Wed 10/5/05	Wed 10/5/05											
20	Revise	0 days	Thu 10/6/05	Thu 10/6/05											
21	Submit draft to EAC	0 days	Fri 10/7/05	Fri 10/7/05											
22	Revise	3 days?	Mon 10/10/05	Wed 10/12/05											
23	Report, Alts., & Compendium to EAC	0 days	Thu 10/13/05	Thu 10/13/05											
24	Status reports for October tasks	4 days?	Tue 11/1/05	Fri 11/4/05											
25	October Progress Report to EAC	0 days	Mon 11/7/05	Mon 11/7/05											
26	Hearing Summary	5 days?	Mon 11/7/05	Fri 11/11/05											
27	Analysis of Comments	4 days?	Tue 11/8/05	Fri 11/11/05											
28	Revise Guidance Document	3 days?	Wed 11/9/05	Fri 11/11/05											
29	Final Guidance to EAC for adoption	5 days?	Mon 11/14/05	Fri 11/18/05											
30	Draft PGD	3 days?	Mon 11/7/05	Wed 11/9/05											
31	Review draft	2 days?	Thu 11/10/05	Fri 11/11/05											
32	Draft PGD to EAC for review	2 days?	Mon 11/14/05	Tue 11/15/05											
33	Revise	2 days?	Wed 11/16/05	Thu 11/17/05											

03/05/05

**Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey**

ID	Task Name	Duration	Start	Finish	July								August		
					6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7	
34	PGD to BOA	1 day?	Fri 11/18/05	Fri 11/18/05											
35	Meet EAC, BOA/SB	0 days	Mon 11/21/05	Mon 11/21/05											
36	Revise Draft GD	2 days?	Tue 11/22/05	Wed 11/23/05											
37	Draft GD to EAC	1 day?	Thu 11/24/05	Thu 11/24/05											
38	Publication	0 days	Mon 11/28/05	Mon 11/28/05											
39	Status reports for November tasks	2 days?	Thu 12/1/05	Fri 12/2/05											
40	November Progress Reports to EAC	0 days	Mon 12/5/05	Mon 12/5/05											
41	Final Reports to EAC	0 days	Fri 12/23/05	Fri 12/23/05											
42	Public Hearing	5 days?	Mon 12/5/05	Fri 12/9/05											
43	Hearing Summary	5 days?	Mon 12/12/05	Fri 12/16/05											
44	Analysis of comments	1 day?	Mon 12/19/05	Mon 12/19/05											
45	Revise Guidance Document	3 days?	Tue 12/20/05	Thu 12/22/05											
46	EAC revises and adopts Final GD	0 days	Fri 12/23/05	Fri 12/23/05											

025514





Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:22 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Revised Work Plan --Gantt Chart

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

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:20 AM ---



"Tom O'Neill"

06/17/2005 03:43 PM

To klynndyson@eac.gov  
cc

Subject Revised Work Plan --Gantt Chart

Karen,

Attached is the Gantt chart that you and Carol requested. I think it is most useful if used in conjunction with the work plan table that I sent originally, but whether you use it as freestanding guide to the project or as a supplement, I hope it meets your needs.

The narrative to complement the Gantt chart will be along early next week.

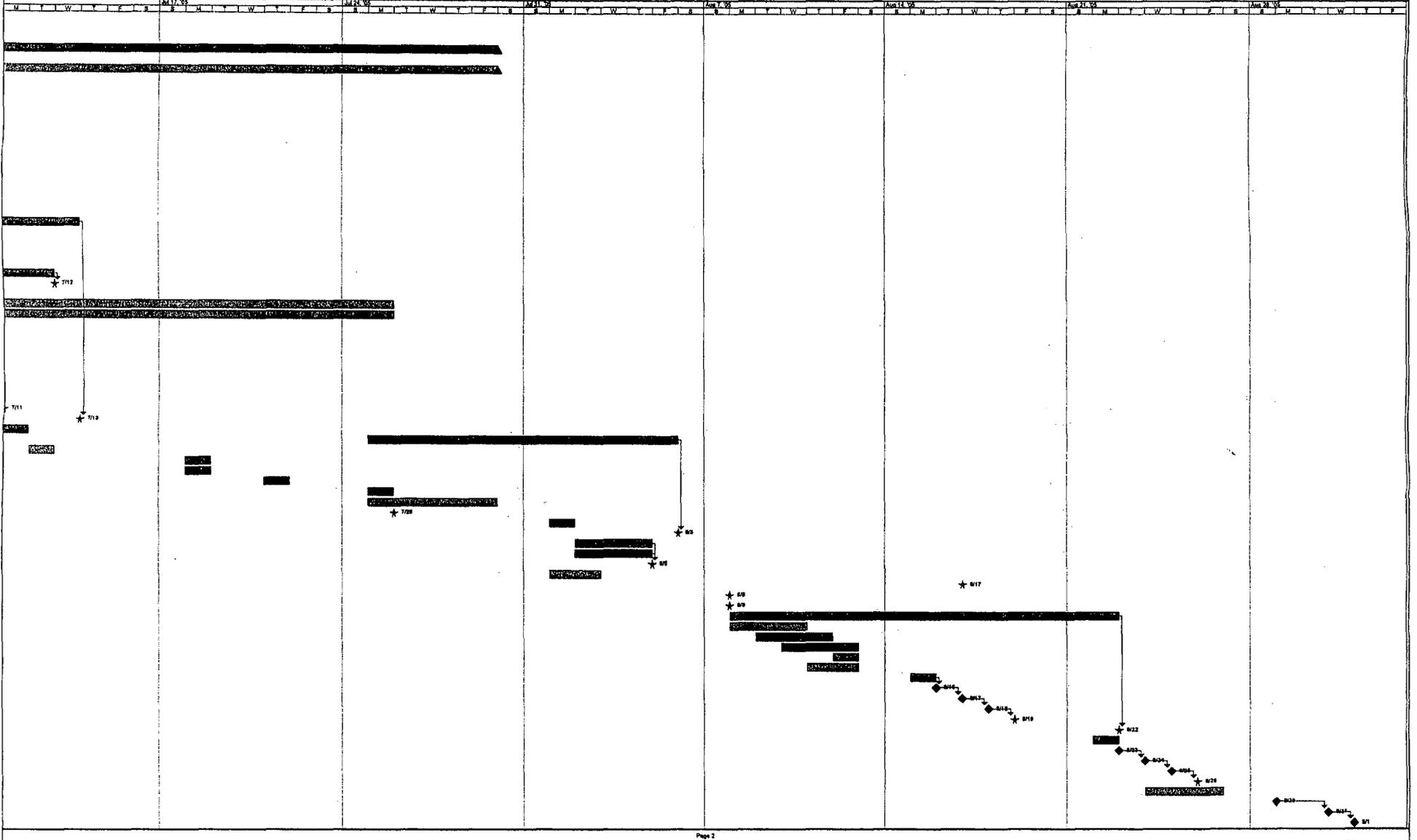


GanttChartFinal.pdf Tom

025517



Provisional Voting & Voting Identification Procedures Study - Eagleton Institute of Politics at Rutgers, The State University of New Jersey





Karen Lynn-Dyson/EAC/GOV  
06/28/2006 10:21 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Eagleton draft press release

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 10:20 AM -----



Gracia Hillman/EAC/GOV  
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV  
cc Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV,  
Juliet E. Thompson/EAC/GOV, "Tom Wilkey"  
[REDACTED]  
Subject Re: Eagleton draft press release

I have some concerns about the press release. In paragraph two, I am not comfortable with the following language in what I believe is paragraph two: Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006.

It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Jeannie Layson  
Sent: 06/10/2005 12:57 PM  
To: Gracia Hillman; Raymundo Martinez; Paul DeGregorio  
Cc: Karen Lynn-Dyson; Carol Paquette; Juliet Thompson  
Subject: Eagleton draft press release

Commissioners,

Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

025521

DRAFT FOR APPROVAL

**EAGLETON INSTITUTE OF POLITICS WINS \$560,000 CONTRACT  
FROM U.S. ELECTION ASSISTANCE COMMISSION**

**Rutgers Institute to Study Provisional Voting, Voter Identification Procedures**

NEW BRUNSWICK/PISCATAWAY, N.J. – The U.S. Election Assistance Commission (EAC) has awarded the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, a \$560,000 contract to study provisional voting and voter identification procedures based on experiences from the 2004 election.

Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006, according to Eagleton Director Ruth B. Mandel, the study's principal investigator. She added that the Moritz College of Law at Ohio State University, Eagleton's partner in the contract application, will be responsible for the legal analysis of the competitively bid, seven-month project.

Eagleton already is home to an extensive civic education and political participation program, with several projects aimed at increasing voter turnout, political participation and Americans' involvement in civic life.

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

The Eagleton project team, led by Mandel, includes Ingrid W. Reed, John Weingart and consultant Thomas O'Neill, retired president of the Partnership for New Jersey, who will serve as project director. The project will address key questions related to provisional voting and voter identification in the context of effective election administration, voter access and ballot security.

Questions include:

- Did the states have in place clear and uniform written procedures, guidelines and instructions to govern the casting and counting of provisional ballots?
  
- Did local procedures reflect the state's uniform procedures?
- Did all states and election jurisdictions make these procedures available to the public, political parties and candidates before the election?
  
- To what extent were poll workers appropriately trained on how to administer provisional ballots, including establishing the identity of the potential voter seeking a provisional ballot?
  
- How were federal funds under the Help America Vote Act used to educate voters about their rights to cast a provisional ballot and where such provisional ballots must be cast to be

counted?

- In states where a provisional ballot had to be cast at the voter's assigned polling place or precinct, was information available to poll workers to allow them to determine the voter's assigned precinct and polling place?
- Did states have mechanisms in place to inform voters casting provisional ballots whether their vote was counted and whether they are now registered for subsequent elections?

Eagleton will address these questions by examining the nation's experience with provisional voting and voter identification requirements and practices in 2004 through extensive research including a survey of local election officials across the country. In addition, the work will be informed by scrutiny from a panel of peer reviewers as well as by comments offered at public hearings to be held in conjunction with the project.

At the contract's conclusion, the team will present a narrative on both topics, indexed databases of major articles on provisional voting and voter identification requirements, summaries of case law on each subject, analyses of provisional voting procedures from around the country and of voter participation and vote fraud under various voter ID requirements, and a report of alternatives to existing practices and procedures.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

Karen Lynn-Dyson/EAC/GOV  
06/28/2006 11:57 AM

To Darrell D. Lee/CONTRACTOR/EAC/GOV  
cc  
bcc  
Subject Fw: Voter ID Report and Appendices

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/28/2006 11:55 AM —



"Tom O'Neill"

05/17/2006 09:25 AM

To klynndyson@eac.gov

cc tokaji.1@osu.edu, foley.33@osu.edu,  
"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>

Subject Voter ID Report and Appendices

Karen,

Attached for review by the Commissioners is the Voter ID Report and its appendices. The appendices are lengthy, but I believe Appendix A should be included in the report sent to the Advisory Boards for review.

Thanks for your forbearance.

Tom O'Neill



Appendices517.doc VoterIDReport05170910.doc

125524



HvonSpakovsky@fec.gov  
04/11/2007 11:35 AM

To chunter@eac.gov  
cc  
bcc  
Subject Fw: Voter ID and turnout

----- Forwarded by Hans von Spakovsky/FEC/US on 04/11/2007 11:35 AM -----  
John Lott <johnrlott@aol.com>

04/10/2007 09:00 PM

To HvonSpakovsky@fec.gov  
cc  
Subject Re: Voter ID and turnout

One option is why don't you have me or someone else who is doing research on voter ID debate them in a forum before the commission. As you know, I already have a study done on this issue and would happy to do it almost as soon as you wanted to set something up. I agree that unless you look at data over time you can't tell anything about the effect of the regulations.

On Apr 10, 2007, at Tuesday, April 10, 3:35 PM, [HvonSpakovsky@fec.gov](mailto:HvonSpakovsky@fec.gov) wrote:

John,

have you seen the controversy over the release of a study done under contract for the U.S. Election Assistance Commission on voter ID and turnout? Here is the link to the press release that the EAC put out about the voter ID study: [http://www.eac.gov/news\\_033007.asp](http://www.eac.gov/news_033007.asp).

Basically, the EAC awarded the contract to individuals who had lots of prior writings indicating their opposition to any voter ID requirements. When they did the study, it apparently didn't come out showing what they wanted it to show, so they recast the numbers to come to the conclusion they wanted. The methodology they used is completely flawed, the most obvious problem being that they only looked at one election year and then compared the turnout in different states, completely failing to take into account the fact that different states have different turnout rates as a matter of historical and cultural trends. Comparing a state in the West that traditionally has very high turnout to a state in the South like Georgia that traditionally has much lower turnout to prove that Georgia's voter ID law must lower turnout is problematic when you don't look at or review longer term turnout trends in each state, particularly before and after an ID requirement is implemented.

025525