

Voter Identification

Section 303(b) of the Help America Vote Act requires most individuals who register by mail and who have not previously voted in an election for Federal office in the state or who have not previously voted in such an election in the jurisdiction if the State is without a HAVA compliant statewide voter registration database, to present certain identification (ID) documents. Under this section, a voter may show either a current and valid photo identification to the appropriate election official when voting in person or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. If voting by mail, a copy of these documents must be submitted with the ballot.

Although state ID requirements vary somewhat, the 5 most common forms of photo identification required by states are:

1. a valid and current driver's license
2. a valid and current state ID card
3. a valid U.S. Passport
4. a valid and current Federal agency official ID card
5. a valid student ID card

In addition, the 5 most common forms of non-photo ID required by states are:

1. a current utility bill with name and address
2. a current bank statement with name and address
3. a current paycheck with name and address
4. a Social Security Card
5. a valid voter registration card or certificate

States have also found a number of distinctive forms of identification which voters may show to meet the requirements of this section of HAVA. Ten (10) unique forms of ID documentation allowed by states are:

1. a valid tribal government ID card
2. a valid state license to carry a pistol or revolver
3. a valid pilot's license
4. a certified copy of the elector's birth certificate
5. a health club ID card
6. a public transportation authority senior citizen's discount card issued by a government agency

7. a drug prescription issued by a government doctor or other government health care provider
8. a buyer's club ID card
9. a neighborhood association ID card
10. a retirement center ID card

State Approaches

Some states have found other alternative methods of verifying a voter's identity. The state of Montana implemented their Voter Verification Service in the recent June 2004 Primary Election. Those individuals who arrived to vote without having the proper identification documentation were asked to fill out a form containing their last name, address, date of birth, driver's license number or the last 4 digits of their social security number. The election judge then calls the local election office which is able to access the State driver's services program via the internet to search the state drivers' database in order to find a match. State officials noted that over 600 individuals were able to vote a regular ballot after being verified by the system, and very few provisional ballots were required. For more information on this program, contact the Montana Election Bureau by phone at 406-444-4732, or via email at seselection@state.mt.us.

Many states report that they have not yet had enough experience implementing the voter ID provisions of HAVA to cite specific lessons learned. For those states that have had experience implementing these provisions, many of those who report no significant problems attribute their success to a proactive approach to collecting the required voter identification documentation. In New Mexico, individuals who fail to submit the proper ID documentation when they registered by mail are sent a letter reminding them of the required documentation and including a postage paid return envelope to enable the registrant to easily forward the required identification document prior to election day. A sample letter from San Juan County, New Mexico is included as *Attachment A* at the end of this report.

Maryland has also taken a proactive approach to collecting ID documentation by sending at least two letters about the new requirements to voters before the March 2004 Primary Election. The State Board of Elections also issued a press release and did some media outreach to inform the public of the new requirements.

Other states having experience implementing the voter ID requirements in recent state primary elections have observed some inconsistencies among their counties in the handling of voter ID documentation and with some poll workers asking all voters for ID documentation before voting. These states acknowledge that these types of issues can and will be addressed through more rigorous

training for poll workers and through better communications between the state election office and the local election offices.

Polling Place Signage

Section 302(b) of the Help America Vote Act requires the appropriate State or local election official to publicly post specific voting information at each polling place on the day of each Federal election. For this section of HAVA, the term "voting information" means:

- A sample version of the ballot that will be used for that election;
- information regarding the date of the election and the hours during which polling places will be open
- Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- Instructions for mail-in registrants and first-time voters under section 303(b);
- General information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights have been violated; and
- General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

Most states have implemented these provisions through the production of posters or wall hangings ranging in size from 8 1/2" x 11" to as large as 3' x 4'. Several states are quite specific not only in describing which documents must be posted at the polling place, but also how many of each document must be posted. Arizona, for example requires that the following informational items are posted at each polling place:

- Two sample ballots
- Two cards of instruction
- Names of and write-in candidates
- Three 75 foot limit signs
- Voter parking /polling place sign
- Four "Vote Here" signs
- Three "Instructions for Voter" signs
- Five instructions to voters and election officials signs regarding the right to vote a provisional ballot

In most states, the office of the chief state election official produces the informational materials required under HAVA, while the local election officials

ensure that these materials are posted at all polling places in their jurisdictions. Sample ballot information, unlike most of the other required postings, changes from election to election and generally requires local election officials to both produce and post this election specific information.

Readability experts as well as most election officials agree that it is not enough to simply post information on the walls of a polling place and hope the voters are able to read and understand the important messages that these materials convey. In order for voters to effectively utilize the posted information, the materials must be designed with readability and usability in mind, and posted in a visible location that can be found easily by the voters.

The following general principals of good design and readability contribute significantly in getting the intended message read and understood by the voting public.

Document Layout

- Avoid producing a “sea of text.” A long uninterrupted page of text can be overwhelming for marginal readers and tiring for all readers.
- Break up the text with white space, headings and subheadings, space between paragraphs, bullets and numbering.
- Include wide margins at each side of your text to give the readers eye some “breathing room.”
- Avoid straight (“justified”) margins on both sides. With justified text every line is the same length and so they all look alike. “Ragged right” margins make it easier for readers to keep their place, and pace.

Type Styles

- Long stretches of *italic type* or of **boldface type** or of underlined type are harder to read than normal type. These are good treatments for words or phrases you want to emphasize, but don't use either one too often or they become very distracting.

- Sentences that are written all in CAPITAL LETTERS are hard to read even for good readers because every capital letter has nearly the same height and shape.
- Use dark ink. Some readers may have trouble reading text that is screened or in light ink. Long lines of “reversed” type (white type on a black background) can also be hard on the eyes, and therefore difficult for persons who are not strong readers.

Readability

- Use shorter words. When possible, use fewer syllables. To marginal readers, there is a big difference between a two-syllable word and a four or five syllable word. For example, use *help* instead of *assistance*; use *copy* instead of *duplicate*; use *question* instead of *inquiry*.
- Use a word (or two) instead of a phrase. This practice is easier on all readers. For example, use *about* instead of *with regard to*; use *if* instead of *in the event that*; use *under* instead of *in accordance with*.
- Keep sentences short. As a rule of thumb, fewer than ten words is ideal, up to fifteen words is more realistic, more than twenty words is too long. One way to keep sentences short is to avoid needless words.
- Keep paragraphs to six or fewer sentences. In many instances, it is better to avoid formal paragraphs and instead turn text to a list of items with *bullets*, *1-2-3*, or *a-b-c* order.
- Write in the active voice. Make the subject of your sentence do the action. For example, “*The application must be signed by the voter.*” is in the passive voice, while “*You must sign the application.*” is in the active voice. The active voice is shorter, more personal and more readable.

Additional information on how to improve the readability and usability of election forms and signage is available in *Innovations in Election Administration 13: Simplifying Election Forms and Materials*. This document was originally published by the Federal Election Commission in 1996, and is now available from the U.S. Election Assistance Commission by calling 1-866-747-1471.

Another resource for election officials seeking to improve the effectiveness of their polling place signage and election materials is the American Institute of Graphic Arts (AIGA). Through their initiative called Design for Democracy, AIGA has created a nonprofit organization dedicated to improving the quality, legibility and effectiveness of election materials. The design for Democracy team has worked extensively with election officials in Cook County, Illinois and with the state of Oregon to develop prototypes for improved ballot design, polling place signage, poll worker training and recruitment material, provisional voting documents and voter education materials. For information on how to contact an AIGA Chapter in your area, use the interactive map on the AIGA web site at: <http://www.aiga.org/content.cfm/chaptermap>

A link to AIGA page on designing effective polling place signage can be accessed at: http://electiondesign.org/pdf/d4d_polling_place_signage.pdf

Several other steps are also worth considering when developing polling place signage.

- Any signs or similar materials produced in English must also be produced in the language of a qualified language minority group if the jurisdiction is covered by the bilingual election requirements of the Voting Rights Act. (42 U.S.C. 1973aa – 1a & 1973b (f) (4)). Additional information on the language minority provisions can be accessed on the web site of the Civil Rights Division of the U.S. Department of Justice at: http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm
- North Dakota notes that the posters they produce are also available in Braille to assist some blind voters, and some are available in an audio version through the State Library's Radio Reading Service.
- Washington State has also produced a video to supplement the information provided on poster size polling place signage. Each county has its own video filmed within that county explaining how to cast a ballot on the particular type of voting system used within that jurisdiction, and taking the voter through the entire voting process. These videos can also be accessed on the Washington Secretary of State's website at: http://www.secstate.wa.gov/elections/voting_video.aspx

Examples of Polling Place Signage

Links to examples of HAVA required polling place signage can be accessed at:

Indiana = <http://www.state.in.us/sos/whatsnew/ivbr.pdf>

Kansas = http://www.kssos.org/forms/elections/voter_rights.pdf

http://www.kssos.org/forms/elections/poster_spanish.pdf
(Spanish version)

Montana = <http://sos.state.mt.us/Assets/elections/VoterBroR4.pdf>

Minnesota = <http://www.sos.state.mn.us/election/PollingPlacePosters.pdf>

North Dakota = <http://www.state.nd.us/hava/education/doc/voters-rights.pdf>

Texas = <http://www.sos.state.tx.us/elections/forms/2003voterposter.pdf>

Vermont = http://vermont-elections.org/elections1/voter_rights.pdf

Administrative Complaint Procedures

Section 402 of the Help America Vote Act requires the establishment of specific State-based administrative complaint procedures to remedy grievances.

HAVA requires that:

- The procedures are uniform and non-discriminatory
- The procedures are limited to violations of title III of HAVA (unless expanded by the state)
- The complaint be in writing, notarized and signed and sworn by the individual filing the complaint
- The state hold a hearing on the record if requested by the complainant
- The state provide the appropriate remedy if there is a violation

- The state dismiss the complaint and publish the results of the procedures if no violation is found
- The state shall make a final determination on the complaint within 90 days of the complaint being filed unless the complainant agrees to a longer period
- If the state fails to meet the 90 day deadline, the complaint shall be resolved within 60 days by alternative dispute resolution procedures containing all materials from any previous proceedings

Section 402 lists, in broad terms, what states must do to develop these procedures. States have initiated specific implementation strategies which add the necessary detail to the statutory requirements and allow these procedures to function as intended.

Hearings

If a complainant requests a hearing pursuant to the statute, a number of states have taken the prudent step of requiring that the hearing be recorded in some manner.

Nevada - Regulations state that: "The hearing will be recorded on audiotape by and at the expense of the Office of the Secretary of State. The recording will not be transcribed but the Secretary of State, a local board of elections or any party to the hearing may obtain a transcript of the hearing at its own expense. If a board or party obtains a transcript of the hearing, the board or party shall file a copy of the transcript as a part of the record and any other interested party may examine the copy of the transcript on the record."

New Mexico - State code provides that: "[t]he (elections) bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost."

Kentucky - State law requires that: "Hearings shall be tape recorded and a transcript of the hearing shall not be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcription at their own expense." Kentucky law also provides that "Hearings may be held and testimony taken by teleconference or video conference with notice to the parties." No mention is made as to the availability of the video for use by other parties.

Investigation

Although few states go into great detail as to what steps should be taken in investigating a complaint outside the hearing process, the *New Mexico* Bureau of Elections describes the steps to follow in an investigation as deemed appropriate under the circumstances:

- Sending an acknowledgement letter to the complainant
- Seeking a response from the election official against whom a complaint is made
- Providing the complainant with a copy of any response received from the election official against whom a complaint is made and give the complainant an opportunity to reply
- Engaging in informal resolution with the parties through a meeting, teleconference, or other means, or
- Dismissing the complaint based on its clear failure to allege a Title IV violation

Determination

Once a final determination has been reached relating to a complaint, most states appear to favor an internet posting as the most cost effective and expeditious way of disseminating the results.

Kentucky - The state requires that all final determinations be posted on the internet homepage of the State Board of Elections and be retained in the permanent archival records of the Board by attaching a copy of the determination to the minutes of the monthly meeting of the Board.

Michigan - State election law requires that the Bureau of Elections to publish the results of its final determination on its website.

Nevada - Nevada law requires that the final determination be mailed to the complainant, each respondent and any interested person who has requested in writing to be advised of the final determination; posted on the website of the Secretary of State; and made available by the Secretary of State, upon request, to any interested person.

North Carolina - Procedures of the State Board of Elections require that the final determination be mailed, faxed, e-mailed, or otherwise delivered to the complainant and each respondent.

Remedy

State laws and procedures appear to give election authorities significant latitude when prescribing remedies for violations found through the administrative complaint process. One common element found in many state procedures is the specification that in no case shall the remedy involve the payment of money to the complainant and in no case shall the election official be subject to any type of civil penalty.

Kentucky - State regulations require that "the remedy awarded shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law." In addition, "[t]he remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system complained of into compliance with Title III."

Michigan - The remedy provided by the Bureau of Elections for any complaint may include, but is not limited to: "Sending a written finding of a Title III violation to the authority; requiring a written response from the election authority, detailing how it will remedy a Title III violation; additional election training for the election authority."

"A remedy shall not, under any circumstances, include a financial penalty."

New Mexico - An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation; an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and the New Mexico Election Code; and a commitment to better inform voters of their rights."

Alternative Dispute Resolution

As required by HAVA, states have also designed and implemented alternative dispute resolution procedures for those cases in which the state fails to render a determination within the statutorily mandated 90 day period after a complaint is filed.

Kentucky - "If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint, and the complainant did not agree to an extension, then the complaint shall be referred to a review panel comprised of

three (3) members of the (State) board (of Elections). The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.

Michigan - "The Legal and Regulatory Services Administration shall appoint a hearing officer to review the record. The hearing officer shall render a final determination within sixty (60) days after receiving the record."

Nevada - Alternative dispute resolution procedures are initiated by the Secretary of State by, "[r]etaining an independent professionally qualified person to act as the arbitrator, if the complainant consents in writing to his appointment as the arbitrator at the time of his appointment." In addition, the Secretary of State may "designate in writing to the complainant the name of an arbitrator to serve on an arbitration panel to resolve the complaint. If proceedings of alternative dispute resolution are initiated pursuant to this paragraph, not later than 3 business days after the complainant receives such a designation from the Secretary of State, the complainant shall designate in writing to the Secretary of State the name of a second arbitrator. Not later than 3 business days after such a designation by the complainant, the two arbitrators so designated shall select a third arbitrator to complete the panel." The arbitrator or arbitration panel may review the record compiled in connection with the complaint, including and without limitation, the audio recording of the hearing, any transcript of the hearing and any briefs or memoranda submitted by the parties but shall not receive any additional testimony or evidence unless the arbitrator or arbitration panel requests that the parties present additional briefs or memoranda." "The arbitrator or arbitration panel shall issue a written resolution of the complaint not later than 60 days after the final determination of the Secretary of State was due pursuant to section 11 of this regulation. This period for issuing a written resolution will not be extended."

North Carolina - State law requires that "[o]n or before the 5th business day after a final Board determination is due, the Board shall designate in writing to the complainant the name of a proposed arbitrator, knowledgeable in election matters, to resolve the complaint. Within 3 business days after the complainant receives this proposal, the complainant shall either agree to the proposed arbitrator or counter with the name of a different proposed arbitrator, also knowledgeable in election matters. Within 3 days the Board shall indicate if the proposed arbitrator of the complainant is acceptable. If it is not, then the names of both proposed arbitrators shall be placed in a container and the arbitrator shall be determined by lot drawn by the complainant. The Board shall be responsible for any reasonable costs (not to exceed the rate of \$75 per hour) and expenses generated by the arbitrator in determining the complaint. The arbitrator may review the record compiled in connection with the complaint and any briefs or memoranda previously filed in the action, but shall not receive any additional testimony or evidence. The arbitrator must issue a written resolution within 60 days after the final Board determination was due. This 60 day period may not be extended.....Under no circumstances may the final determination of an arbitrator

order action to be performed except in the complaint at hand or order a change in state law, federal law or Board policies, procedures or rules.”

In addition to these very specific procedural mechanisms, states must also be concerned with several more practical aspects of implementing their administrative complaint procedures.

Pre-Clearance

States covered under Section 5 of the Voting Rights Act must get the administrative complaint procedures pre-cleared by the Voting Section of the Civil Rights Division of the U.S. Department of Justice before they implement the procedures. In addition, those states and jurisdictions covered under the language minority provisions of the Voting Rights Act must make sure that all forms and materials provided for the administrative complaint process are also provided in the appropriate language of the minority group or groups. Arbitrators and any other individuals fluent in the appropriate languages should also be made available to those participating in the administrative complaint procedure hearing or alternative dispute resolution process.

Voter Education

Adopting and implementing administrative complaint procedures without informing the voting public on how to use these procedures is contrary to the spirit and intent of the Help America Vote Act. States should, at a minimum, post their administrative complaint procedures and forms prominently on their website and encourage local election administrators with a web presence to do likewise.

Other methods for making these procedures available to the public include posting the information at each polling place, each “official” voter registration site in the jurisdiction and in the office of the local election official.

Delaware has developed brochures describing the “who, when, how, and why” of the administrative complaint process. These brochures are sized so that they can be included with sample ballot or other election mailings to voters, or they can be used as handouts at the polling places on election day in order to ease some of the burden of providing this information from the poll workers.

Transmission

If voters are given the option of filing an administrative complaint with a local election official, the state should establish a timely period for the transmission of these complaints from the local official to the state election office.

Delaware, for example, requires that if one of the county election departments receives a complaint, the county must forward it to the state Commissioner of Elections on the same business day that it is received.

Tracking

In order to meet the specific deadlines for responding to and making a determination on an administrative complaint, states should establish a tracking procedure to handle all complaints. **Delaware** is currently in the process of developing an internet based tracking system in which all complaints will be assigned a unique identifier number. The status of each complaint can then be tracked by the complainant via a secure login on the state website using the assigned number.

State Experiences Using the Administrative Complaint Procedure

Two states report having experience responding to administrative complaints as of the date of this report.

Maryland had two administrative complaints filed after their March 2, 2004 Primary Election. Both Maryland complaints dealt with whether the voters' provisional ballots should have been counted by the local board of canvassers. Both complaints requested a hearing on the record and final determinations can be accessed on the State Board of Elections' website at:

http://www.elections.state.md.us/pdf/hearing_liss.pdf
and

<http://www.elections.state.md.us/citizens/hava/Kolbe Howard Co final determination.pdf>

The State Board of Election stated that the hearings for these two complaints lasted over two hours and required significant amounts of staff time in preparation for the hearing and in drafting the final determination. These two initial complaints have led the State Board to conclude that the procedures have the potential to be administratively difficult if a high volume of complaints are filed as a result of a particularly large voter turnout in a high profile election.

The Colorado Secretary of State received an administrative complaint as a result of the November 2003 general election in Garfield County. The complaint questioned whether all ballots in the jurisdiction were counted in accordance with HAVA and state law, whether first time voters who registered by mail showed or submitted the proper ID, and whether the county central count optical scan tabulator was functioning properly.

The report and final determination from the Colorado complaints can be accessed at: <http://www.sos.state.co.us/pubs/hava/garfield.pdf>

As was the case in Maryland, the Colorado Secretary of State's office found that these procedures took significant amounts of staff time, particularly when drafting the final 248 page Garfield County report. Colorado intends to try and keep potentially costly and time consuming administrative complaints to a minimum by conducting thorough training and education programs for both election officials and the general public.

Examples of Administrative Complaint Forms and Procedures

Links to examples of State administrative complaint forms and procedures can be accessed at:

California = <http://www.ss.ca.gov/elections/hava-complaint-procedure.htm>

Colorado = http://www.sos.state.co.us/pubs/hava/hava_complaint_1.pdf

Delaware = <http://www.state.de.us/election/publications/Complaints%20-%20PDF.pdf>

Maryland =
Administrative Complaint Procedures:
http://www.elections.state.md.us/pdf/HAVA_Administrative_Complaint_Form_Instructions.pdf

Complaint Form:
http://www.elections.state.md.us/pdf/HAVA_Administrative_Complaint_Form.pdf

New Hampshire =
Administrative Complaint Procedures:
<http://www.doj.nh.gov/elections/32313.html>

Complaint Form: http://www.doj.nh.gov/elections/complaint_form.pdf

New Mexico =

Administrative Complaint Procedures:

<http://www.sos.state.nm.us/Election/ComplaintRule.pdf>

Complaint Form: <http://www.sos.state.nm.us/Election/AdminComplaintForm.pdf>

Oregon = <http://www.sos.state.or.us/elections/violations/oar165-001-0090.html>

South Carolina =

Administrative Complaint Procedures:

http://www.state.sc.us/scsec/t3comp_form.htm

Complaint Form: http://www.state.sc.us/scsec/Title3_Complaint_Form.pdf

Virginia = <http://www.sbe.state.va.us/hava/ElectionDay-Complaint-Form.pdf>

Wyoming = <http://soswy.state.wy.us/election/hava/complain.pdf>

For specific information on filing an administrative complaint in your state, you may contact your chief state election official via the link below.

http://eac.gov/list_states.asp?format=none

DRAFT

Attachment A

Dear Voter,

CONGRATULATIONS!!! You are now a registered voter in San Juan County, New Mexico.

Enclosed is your Voter Information Card. Please look it over carefully to make sure all the information is accurate. If it is not, please contact our office immediately so corrections can be made.

The information card shows your polling place. If you determine that you do not want to travel the distance to that polling place on election day, you can vote on a paper ballot in your home or go to an early voting site before election day. If you would like additional information about these methods of voting, please call our office.

The polling place listed is the one that is assigned for the precinct in which you live. It is your designated polling place for State and Federal elections. When cities, school districts, the college and the county have elections they often will combine precincts to cut down on the cost of elections. When this happens, your polling place may be different from the one listed on your information card. *Please do not be confused when this happens.* Look at the information provided about the election, find your precinct number and you will be at the correct polling place.

If our voter information card indicates that your party is DTS (Declined To State), it means that you have not chosen a party and will **NOT** be able to vote in the June primary election of even numbered years. You will, however, be able to vote in any other election.

Please be advised that a newly enacted Federal Law "Help America Vote Act" or "HAVA" requires that first time registrants in our county, who register by mail, must provide a copy of their identification before voting.

As a new voter, who registered by mail, you must provide identification at the time you register to vote, prior to Election Day at your polling place on Election Day.

The following forms of identification are acceptable:

1. Current and valid photo identification.
2. A current utility bill.
3. A current bank statement.
4. A current government check, or
5. Any other government document that shows your name and address.

Enclosed for your convenience is a postage paid, return envelope for you to send a copy of your identification to our office. If you have any questions regarding your voter registration, upcoming elections or any other function of the County Clerk's office, please feel free to call or come by our

office. It is located at 100 South Oliver in Aztec. Our office hours are 7 AM to 5:30 PM Monday through Friday.

As your County Clerk I would like to encourage you to vote in all elections. Your vote **DOES** count and is important.

Sincerely,

Fran J. Hanhardt
San Juan County Clerk

DRAFT

Carol A. Paquette/EAC/GOV

10/28/2004 07:36 PM

To DeForest Soaries Jr./EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Paul Adam Ambrogi/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Nancy Jackson/EAC/GOV@EAC, Daniel Murphy/EAC/GOV@EAC, Kay

bcc

Subject preparing for post-election issues

In a recent conversation with the Chair, he stated a requirement for the EAC to be prepared for a possible scenario where there is no concession by Thursday (11/4). We also touched on this topic briefly in a Commissioners discussion meeting. His view of the EAC role in this circumstance is to be a narrator - to keep people informed and explain (without interpreting or interjecting ourselves) what's going on (law suits, recounts, etc.). He drew the analogy to Rudy Guiliano's role after 9/11. EAC can be a source of impartial information without slanting or interjecting ourselves into situations. He also referred to using a "teach-in" approach. THE PURPOSE OF THIS EMAIL is to collect your lists of potential issues that we may need to address. Some obvious ones are provisional balloting, voter ID requirements, voter registration/voter fraud, absentee balloting, military balloting, electoral college, election processes dealing with tabulation and its aftermath, court cases. Please provide any additional topics. Kay will oversee the collection of basic materials on these topics, so we can prepare in advance to respond quickly if there is a need or desire for an EAC statement, comments from the Commissioners, press interviews, etc. Thanks!

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

026231



"Doug Lewis"
[Redacted]
r.com>

11/06/2004 08:16 PM

Please respond to
[Redacted]

To "Ray Martinez" <rmartinez@eac.gov>, "Deforest Soaries" <dbsoaries@eac.gov>, "Gracia Hilman" <ghillman@eac.gov>, "Paul Degregorio" <[Redacted]>, "Rebecca Vigil-Giron" <[Redacted]>, "Thomas Wilkey" <[Redacted]>, "Alice Miller (E-mail)" <[Redacted]>, "Donetta Davidson" <[Redacted]>

bcc

Subject Elections Reform Task Force

History: This message has been forwarded

Commissioners:

This is a Heads UP notice: The Election Center is calling its National Task Force on Election Reform (which we utilized to review Election 2000) back into existence. Even though this election went exceedingly well from a public perception, we noticed many areas that need the attention of state and local election officials and especially state legislatures. To keep this brief, I won't go into great detail now (I will send you a more detailed outline in a few weeks) but we saw enough problems in Voter Registration, Absentee Balloting, Provisional Balloting, voter ID, Poll Watchers, early voting issues and even some problems with voting systems, to warrant coming back together. We will publish a set of recommendations as to what election officials think needs to be fixed and why and even at what level of government.

That Task Force is very likely to meet on January 4 and 5 in Washington, DC, at the Westin Embassy Row. You are welcome to sit in on any and all discussions of the Task Force. On January 6 and 7 at the same hotel, the Joint Election Officials Liaison Committee, which is comprised of the six national elections organizations, will meet. You are also welcome for the two days of meetings that will encompass known legislative initiatives of the House and Senate, along with a review of how Election 2004 went in their states.

I wanted to let you know so that you don't hear it as a surprise, and we welcome your participation.

R. Doug Lewis
Executive Director
The Election Center, Inc.
12543 Westella, Ste. 100
Houston, TX 77077-3929
Phone: [Redacted]
FAX: [Redacted]
Mobile: [Redacted]
[Redacted]

Carol A. Paquette/EAC/GOV
12/10/2004 05:56 PM

To DeForest Soaries Jr./EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Daniel Murphy/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Spring A. Taylor/EAC/GOV@EAC,
bcc

Subject starting on the same page - NEED RESPONSE BY MONDAY

Commissioners -

Wanted to make sure we are all on the same page regarding the 5 guidance topics and the studies that we know we will be doing this year. This is the information I will recommend for your vote at the public meeting next week. Here's what I think they are, but need confirmation.

Guidance topics:

1. Voluntary voting system standards - this was voted on at last public meeting as public hearing topic
2. Voter registration, including statewide database, voter ID, related matters - this was voted on at last public meeting as public hearing topic
3. Provisional balloting - this was voted on at last public meeting as public hearing topic
4. Voting system auditability, voter verification - in notes from Commissioners' discussions, emphasized at last public meeting as a special topic under voting system standards
5. Voter education, including administrative complaint procedures, voter's rights, signage, voter ID, "civics 101" - in notes from Commissioners discussions, emphasized at last public meeting

Studies:

1. Section 244 - impact of 303(b) voter ID requirements on voters who register by mail, due July 2005
2. Section 245 - electronic (Internet) voting, due July 2004
3. Section 246 - free absentee ballot postage, due 11/2003
4. Election Day, UOCAVA and NVRA surveys
5. college and corporate poll worker programs

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

026233

Carol A. Paquette/EAC/GOV
02/14/2005 06:06 PM

To Gracia Hillman/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, DeForest Soaries
cc Juliet E. Thompson/EAC/GOV@EAC, Kay
Stimson/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,
bcc

Subject Commissioners Discussion Topics - Feb. 15, 2005

Commissioners -

Here is agenda for tomorrow's discussion. Briefing books will be provided in advance.

Information items

1. EAC letter to Congressman Domenici - Julie (Tab 1)
2. Senate and House Appropriations Committees Strategy - Chair & Julie
3. Public meetings and hearings - Julie (Tab 2)
 - 2/23 Columbus weather contingency plan
 - March 22 public meeting
 - April 26 public meeting/hearing
 - open mikes at public hearings

Decision items

4. NIST Software Reference Library - Commissioner Soaries & Carol (Tab 3)
5. NIST & standards work - Carol (Tab 4)
 - subject matter expert
 - other recommendations
 - collect RFPs
 - working group to develop voting system management guidelines
 - working group to develop electoral process outcome measures
 - white paper on enhanced quality control for voting system acceptance
6. Provisional voting/voter ID research approach - Carol (Tab 5)

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

026234

Karen Lynn-Dyson/EAC/GOV
02/24/2005 04:55 PM

To Gracia Hillman/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, DeForest Soaries

cc

bcc

Subject Gentle reminder for feedback on SOW for Provisional Voting
and Voter ID, and on a working group meeting on State wide
VR databases

Commissioners-

You'll recall that I sent you two e-mails related to various projects that need to get under way, and that I need input regarding them by COB tomorrow (Friday).

1. Carol Paquette and I need your approval of the statement of work for the provisional voter and voter ID project. You will recall that we are recommending that these two projects be combined (for contracting purposes); the two projects are inter-related and the workplans and timelines for deliverables would be staggered for the two projects. Baring any major concerns or issues heard from the Commissioners, Carol and I will be posting the RFP for this work on Monday.

2. We also need your approval for the workplan for the Statewide VR database project. It is our hope that the new research analyst will take major responsibility for this project in early March. In the event that this is not possible, I am soliciting names of consultants who could be hired to do this work. Thus far, Tom Ferguson is the only consultant who has been recommended.

Thanks for getting back to me.

Regards

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

026235



"Hans.von.Spakovsky@usdoj.
gov"
<Hans.von.Spakovsky@usdoj.
gov>

To "pdegregorio@eac.gov" <pdegregorio@eac.gov>
cc
bcc

03/15/2005 12:28 PM

Subject FW: RFP

Paul,

FYI - and how is your schedule in the next few weeks? We should get together for lunch again to compare election notes.

Hans

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

From: von Spakovsky, Hans (CRT)
Sent: Tuesday, March 15, 2005 10:00 AM
To: 'jthompson@eac.gov'
Subject: RFP

Julie,

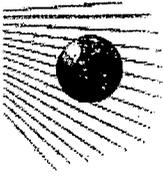
I noticed your RFP on the website yesterday for provisional voting and voter ID. I am concerned over the description of provisional voting entitlement because it may lead to confusion and increase a misunderstanding that I have already found exists in the election community. Under "Background," it states that Section 302(a) "requires that all States allow the casting of provisional ballots in instances where a voter declares his/her eligibility to vote, but his/her name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote." This is an incorrect summary of the law.

To be entitled to a provisional ballot in the first case, the voter must declare not only that he is eligible to vote, but also that he is registered. This is not a minor point. As you are well aware, while a voter may be eligible to vote under state law because he is over 18 and resides in the precinct where he is trying to vote, he cannot vote unless he went through the state's voter registration process. If he did not try to register, he is not entitled to a provisional ballot. This provision does not mandate election day registration but this summary could be interpreted to require that result. Congress was clearly trying to fix a problem that occurs when individuals take all of the necessary steps to register to vote, but some kind of administrative error by the state (such as DMV not forwarding the registration to election officials) prevents the voter's name from getting on the registration list. It was not meant to gut state registration requirements or to allow individuals to vote who do not bother to register.

Hans A. von Spakovsky
Counsel to the Assistant Attorney General
Civil Rights Division - Room 5539
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, D.C. 20530

Telephone (202) 305-9750
Facsimile (202) 307-2839

026236



Paul DeGregorio /EAC/GOV

03/15/2005 02:27 PM

To: "Holland Patterson (EAC)" <hpatterson@eac.gov>

cc

bcc

Subject: Fw: RFP

Holland,
Get with Hans and see if we can do lunch next Thursday. Thanks

Sent from my BlackBerry Wireless Handheld

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

From: "Hans.von.Spakovsky@usdoj.gov" [Hans.von.Spakovsky@usdoj.gov]
Sent: 03/15/2005 11:28 AM
To: "'pdegregorio@eac.gov'" <pdegregorio@eac.gov>
Subject: FW: RFP

Paul,

FYI - and how is your schedule in the next few weeks? We should get together for lunch again to compare election notes.

Hans

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

From: von Spakovsky, Hans (CRT)
Sent: Tuesday, March 15, 2005 10:00 AM
To: 'jthompson@eac.gov'
Subject: RFP

Julie,

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To be entitled to a provisional ballot in the first case, the voter must declare not only that he is eligible to vote, but also that he is registered. This is not a minor point. As you are well aware, while a voter may be eligible to vote under state law because he is over 18 and resides in the precinct where he is trying to vote, he cannot vote unless he went through the state's voter registration process. If he did not try to register, he is not entitled to a provisional ballot. This provision does not mandate election day registration but this summary could be interpreted to require that result. Congress was clearly trying to fix a problem that occurs when individuals take all of the necessary steps to register to vote, but some kind of administrative error by the state (such as DMV not forwarding the registration to election officials) prevents the voter's name from getting on the registration list. It was not meant to gut state registration requirements or

026237

to allow individuals to vote who do not bother to register.

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026238



Raymundo
Martinez/EAC/GOV
04/17/2005 08:47 PM

To Gracia Hillman/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, DeForest Soaries
Jr./EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E.
Thompson/EAC/GOV@EAC, ggilmore@eac.gov
bcc

Subject Surprise DOJ Opinion on Voter ID in AZ

Commissioners:

Attached is a letter opinion that was issued on Friday by DOJ (Office of Civil Rights) regarding the very question that was posed to me by Congressman Ed Pastor on Thursday at our budget hearing. This comes to me as a major (and unwelcomed) surprise.

This is a very serious issue. DOJ has taken the position that AZ may impose ID requirements on all voters, including those casting a provisional ballot. While the underlying rationale of the DOJ opinion is one which I vigorously disagree with, the more serious transgression, from my perspective, is that there was absolutely no coordination (or at least a "heads up") between DOJ and EAC on this matter (despite the fact that we are including DOJ in every discussion dealing with our guidance authority). Clearly something has gone awry here. My recollection is that Hans clearly stated early in our tenure that now that the EAC was up and running, we were to assume the responsibility of interpreting HAVA, while DOJ was the enforcement agency. This is the first time (other than filing the amicus brief during the provisional voting litigation back in October) where DOJ has taken it upon themselves to insert their opinion as the interpreter of HAVA, despite the presence of the EAC.

I think the procedural issue regarding this matter requires a discussion among the four of us as soon as possible. The substance of the issue will require some analysis by our counsel, but nevertheless, I believe there are serious flaws with the DOJ opinion.

RAY MARTINEZ III
Commissioner
U.S. Election Assistance Commission
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DOJ_Opinion_on_PROP200.pdf

026239



U. S. Department of Justice

Civil Rights Division

Deputy Assistant Attorney General

Washington, D.C. 20530

April 15, 2005

VIA FACSIMILE AND REGULAR MAIL

Honorable Janice K. Brewer
Secretary of State
State of Arizona
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007-2888

Dear Secretary Brewer:

I am writing in response to your letter of April 5 to Steven G. Bradbury, Principal Deputy Assistant Attorney General in the Office of Legal Counsel, requesting a formal opinion from the Department of Justice on certain issues relating to the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15301-15545. Because the Office of Legal Counsel is not authorized to provide legal advice to persons outside the Executive Branch of the federal government, Mr. Bradbury has forwarded the request to the Civil Rights Division.

Although the Department of Justice states its formal positions with respect to the statutes it enforces only through case-by-case litigation, we do on occasion offer our general views on the manner in which we intend to enforce a particular statute or set of laws. As you know, HAVA vests the Attorney General with the responsibility of enforcing Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories. The Attorney General, in turn, has delegated those enforcement functions to the Civil Rights Division. In light of this authority, we will attempt to answer the question posed in your letter to the extent we can, although it must be emphasized that the opinions expressed here are not binding.

Your letter focuses on the requirements of HAVA Section 302(a), 42 U.S.C. 15482(a), as that section relates to provisional ballots. Specifically, you question whether, under this section, it is permissible for a state to mandate that potential voters show identification at the polls prior to receiving a provisional ballot.

Section 302(a) of HAVA requires that a provisional ballot be given to individuals (i) whose eligibility is challenged by election officials, or (ii) whose name does not appear on the

official list of eligible voters for the polling place, if the "individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office." Section 302(a) then provides a series of steps that should be taken by poll officials to transmit the ballot and voter information to election officials for "prompt verification." Whether the individual is eligible to vote, and whether the provisional ballot will be counted, are matters to be determined by state and local election officials "in accordance with State law." See HAVA Section 302(a)(4).

Two other sections of HAVA are also relevant to your question. Section 304, 42 U.S.C. 15484, specifically states that "[t]he requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict." Further, Section 305, 42 U.S.C. 15485, provides that "[t]he specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State."

Taken together, all of these provisions make it clear that the determination of an individual's eligibility to vote is left to the states, and while Title III establishes minimum standards, states may impose stricter requirements as long as those requirements are uniform and nondiscriminatory. If a state such as Arizona wishes to impose identification requirements that are stricter than HAVA, it may do so without violating the statute. This flexibility includes the right to impose stricter requirements for voter eligibility (including eligibility to receive a provisional ballot).

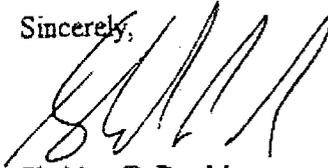
The major purpose of Section 302(a) is to allow individuals to vote who have taken all necessary steps to register to vote but whose registrations were not completed by election officials (or whose names were not added to the voter registration list) due to some administrative error. If a State requires a provisional voter, who has affirmed that he is registered and eligible to vote, to provide additional information (e.g., residence address, birth date, location where he attempted to register to vote, etc.) that may be needed for the jurisdiction to verify that the individual actually did register and is truly eligible to vote, nothing in HAVA would stand in the State's way. In other words, a State may refuse to issue a provisional ballot to an individual who refuses to provide such information.

While HAVA was passed by Congress to regulate federal elections, Sections 304 and 305 illustrate that Congress was well aware that the Constitution -- in particular, Art. I, § 4, cl. 1 -- explicitly commits the regulation of voting to the states. Indeed, a State may "provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Roudebush v. Hartke*, 405 U.S. 15, 23 (1972); see also *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986) (States exercise "broad power to prescribe the 'Time, Places and Manner of holding Elections for Senators and Representatives,' which power is matched by state control over the election process for states offices."). In light of this broad grant of power, "state legislatures may without transgressing the Constitution impose extensive restrictions on voting." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004).

In conclusion, it is our considered judgment that neither HAVA nor any other provision of federal law preempts states from imposing identification requirements at the polls, including identification requirements for the receipt of provisional ballots. In fact, insuring the security and integrity of elections is a logical and entirely legitimate objective of state regulation of the election process, which an identification requirement naturally facilitates.

We hope that this is responsive to your questions. If you have any additional concerns, please do not hesitate to contact us.

Sincerely,



Sheldon T. Bradshaw
Principal Deputy Assistant Attorney General

Carol A. Paquette/EAC/GOV
04/18/2005 06:41 PM

To Gracia Hillman/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, DeForest Soaries
cc Sheila A. Banks/EAC/GOV@EAC, Adam
Ambrogi/EAC/GOV@EAC, Holland M.
Patterson/EAC/GOV@EAC, Spring A.
bcc

Subject Commissioners discussion topics - April 19

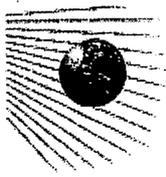
Commissioners -

There is one decision topic and three discussion topics for tomorrow.

1. DECISION - Recommendation for provisional voting contract award - Karen (Tab 1)
2. DISCUSSION - Dept of Justice opinion letter on voter ID requirements - Commissioner Martinez (Tab 2)
3. DISCUSSION - VVSG topics - Carol (Tab 3)
 - a. grandfathering of voting systems for Version 1
 - b. more NIST research to support security approach for Version 2

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

026243



Paul DeGregorio /EAC/GOV
08/19/2005 11:06 AM

To Gracia Hillman, Raymundo Martinez, ddauidson@eac.gov,
Tom Wilkey, Juliet Thompson, Karen Lynn-Dyson, Carol
Paquette

cc

bcc Amie J. Sherrill/EAC/GOV

Subject Eagleton

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to be studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

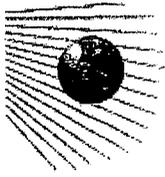
Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against

026244

Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

Paul DeGregorio
Vice Chairman
US Election Assistance Commission
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Suite 1100
Washington, DC 20005
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202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov



Paul DeGregorio /EAC/GOV
09/19/2005 11:25 AM

To Karen Lynn-Dyson/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV
bcc

Subject: Fw: INFORMATION ONLY: media clips, 9-19-05

See report below that mentions Eagleton. Is Mr Weingart working on our study? Seems like he already has his mind made up.

Sent from my BlackBerry Wireless Handheld
Bryan Whitener

From: Bryan Whitener
Sent: 09/19/2005 11:10 AM
To: Gracia Hillman; Paul DeGregorio; Raymundo Martinez; Donetta Davidson
Cc: Adam Ambrogi; Amie Sherrill; Bola Olu; Brian Hancock; Carol Paquette; daniel.murphy; DeAnna Smith; Diana Scott; Edgardo Cortes; Gavin Gilmour; Gaylin Vogel; Jeannie Layson; Joseph Hardy; Joyce Wilson; Juliet Thompson; Karen Lynn-Dyson; Margaret Sims; Nicole Mortellito; Roger Larouche; Sheila Banks; Tamar Nedzar; Thomas Wilkey; twilkey
Subject: INFORMATION ONLY: media clips, 9-19-05

Commissioners:

The following items are in the news.

- Fred Lucas of the *Danbury News Times* in Connecticut provides more details on the story involving the state's reaction to EAC's advisory on lever machines. Lucas provides more details on the advisory itself as well as the role of EAC and DOJ in HAVA as follows.

"Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania....Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws....EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment."

- The *Washington Post* and the *New York Times* report on the recommendations released by the Carter-Baker Commission. Among other issues dealing with photo ID, voter identification numbers and registration, the Post mentions recommendations regarding EAC as follows.

"The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations....Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission."

Commission on Federal Election Reform: Final Commission Report: Building Confidence in U.S. Elections
<http://www.american.edu/ia/cfer/>

- Gerald Witt of the *Danville Register and Bee* in Virginia reports on the end of lever machine voting in

026246

Danville, VA. The old lever machines were auctioned off on Saturday. Brian Hancock is quoted as follows.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

- James Quirk of the *Asbury Park Press* reports on fraud allegations contained in a report by the New Jersey Republican State Committee. John Weingart of Eagleton Institute of Politics questions the magnitude of the charges and EAC is mentioned as follows.

"The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls, and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory."

- The *Toledo Blade* reports on the appointment of Keith Cunningham, director of the Allen County Board of Elections in Ohio to EAC's Board of Advisors.

#####

Voting machines may be history

<http://news.newstimeslive.com/story.php?id=74485&category=Local>

Federal panel finds Connecticut's lever booths inaccessible to the disabled, prone to error
By Fred Lucas

THE NEWS-TIMES

Friday, September 16, 2005

Connecticut's voting machines are prone to error, and lack accessibility for disabled and non-English speaking voters. Because of that finding by a federal panel, the state's 3,500 lever machines could be junked before the 2006 election.

They would have to be replaced with new machines that cost between \$5,000 and \$20,000 each.

State officials are scrambling to find out the ruling by the U.S. Election Assistance Commission is binding.

Many don't want to change from the old machines, which have worked fine so far, said Danbury Republican Registrar of Voters Mary Ann Doran.

"These machines do not break down and are dependable," Doran said in defense of the lever machines. "We've had no floating chads. We've had no power outages. These work."

Connecticut is spending \$33 million in federal money to buy new electronic voting machines. The state plans to ensure each polling place in the state has one electronic machine accessible to disabled people, with a Spanish ballot available and a paper voting receipt to ensure accuracy. The 769 new voting machines are supposed to be available in time for the 2006 election.

The new mandates from the federal election panel were issued under the auspices of the 2002 federal Help America Vote Act, or HAVA, passed in light of the debacle of the 2000 presidential race, when massive malfunction of the counting process in Florida the the outcome of the George W. Bush-Al Gore

race into question for two months. The commission was established to implement rules to guarantee voting would be fair and accessible throughout the country.

"The state looks to the EAC to give us guidance in meeting HAVA and they have given us none," said Secretary of the State Susan Bysiewicz Thursday. "The \$33 million is enough to provide one machine per polling place. We don't know if it will be enough to replace the 3,500 lever machines."

Lever voting machines were not banned in the federal law. The new ruling is an advisory decision from the commission in response to a question from election officials in Pennsylvania.

Disability advocates are ready to say good riddance to the lever voting machines, said Danbury resident Chris Kuell, vice president of the state's chapter of the National Federation of the Blind.

"They are not accessible," Kuell said. "The United States has 54 million disabled people. People who are visually impaired, are in a wheelchair, or have problems with motor skills can think and vote, but they can't operate these machines."

Kuell said he was satisfied that Connecticut is at least getting one specific machine per precinct that is accessible, but hopes for the day when every district has more than one.

"California, Nevada, Kentucky and Texas have used electronic voting machines for years," Kuell said. "More states are going to having more accessible machines. This country's government is based on accurate voting and the right to vote."

Though the commission's rulings do not have the force of legislative decisions, the U.S. Supreme Court has held that administrative commissions carry deferential weight when courts interpret laws.

EAC spokeswoman Jeanie Layson said it's up to the U.S. Department of Justice to decide whether to enforce the ruling. A U.S. Justice Department spokesman on voting matters reached Thursday said he would research the decision, but did not call back and could not be reached later for comment.

The EAC decision faulted lever machines for not having a permanent paper record for "audit capacity" of votes.

Also, the machines do not have a documented test to show they have an error rate of less than one in 500,000. Further, the machines are not accessible to the handicapped, and have no alternate language accessibility.

Attorney General Richard Blumenthal said the commission's opinion is only advisory and not binding on any state.

"The authority to decide whether, when, and how to enforce the statute belongs to the Department of Justice," Blumenthal said. "Regarding the central issue – what constitutes an adequate paper trail or audit capacity under the statute – we believe that the DOJ will carefully and objectively consider the Secretary of the State's position, and accept good-faith compliance with the law."

Many local officials hope Blumenthal is right.

"I would like to know how they are going to implement this," said Brookfield Republican Registrar Karen Nindorf. "Who's going to pay for all this? The federal government is good at mandating things and not funding them. This is amazing to me."

Doran, the Danbury registrar, has a problem with forcing cities and towns to have ballots in an alternate language.

"Every voter should read English," Doran said. "How can you be an intelligent voter if you cannot read

English? All the campaign literature is in English."

Under federal law, if a city or town has more than 1 percent of the population that predominantly speaks another language, it must provide a ballot in that language at each polling place. Seven municipalities in Connecticut, including Danbury, must provide ballots in Spanish.

Doran said local officials still do not know for certain what machines the federal government will and won't accept, so it would be tough to know the cost of replacing 42 voting machines.

Newtown has 25 voting machines, one for every 900 people. But with electronic machines, traffic is expected to move slower, as many voters are unfamiliar with the machines. That could mean the town would have to buy 75 machines to replace its lever machines, and that would cost about \$300,000, said Newtown First Selectman Herb Rosenthal, the president of the Connecticut Conference of Municipalities.

Rosenthal, town clerks and registrars of voters will meet with Bysiewicz at 10 a.m. Wednesday to determine how the ruling might affect towns.

"I don't see how we could comply with that now," said Newtown First Selectman Herb Rosenthal, president of the Connecticut Conference of Municipalities. "It's unclear who's going to pay for this. If the federal government tries to force this, I hope the state will try to get an injunction. We've never had a problem with voting as far as I'm concerned and now the federal government says the machines are no good."

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Carter-Baker Panel to Call for Voting Fixes

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/18/AR2005091801364.html>

Election Report Urges Photo IDs, Paper Trails And Impartial Oversight

By Dan Balz
Washington Post Staff Writer
Monday, September 19, 2005; A03

Warning that public confidence in the nation's election system is flagging, a commission headed by former president Jimmy Carter and former secretary of state James A. Baker III today will call for significant changes in how Americans vote, including photo IDs for all voters, verifiable paper trails for electronic voting machines and impartial administration of elections.

The report concludes that, despite changes required under the Help America Vote Act of 2002, far more must be done to restore integrity to an election system that suffers from sloppy management, treats voters differently not only from state to state but also within states, and that too often frustrates rather than encourages voters' efforts to participate in what is considered a basic American right.

The 2002 federal legislation grew out of the disputed election of 2000 and is not yet fully implemented. But the Carter-Baker commission said that even with some important changes in place, the 2004 election was marred by many of the same errors as the 2000 election. "Had the margin of victory for the [2004] presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated," the report states.

Disputes over the counting of provisional ballots, the accuracy of registration lists, long lines at some polling places, timely administration of absentee ballots and questions about the security of some electronic voting machines tarnished the 2004 elections.

Many complaints came in Ohio, where President Bush narrowly defeated Sen. John F. Kerry (D-Mass.) to secure his reelection victory. Although there has been no credible evidence of partisan manipulation of the election in Ohio, the criticisms there and elsewhere have renewed calls for a more uniform, trustworthy and nonpartisan election system across the country.

Commission leaders say the goal of the panel's 87 recommendations -- at an estimated cost of \$1.35 billion -- is to make participation easier while also enhancing ballot integrity, a careful balancing of the long-standing argument between Democrats and Republicans in the administration of elections.

The most controversial recommendation calls for all voters to produce a standard photo identification card before being allowed to vote. The commission proposes that, by 2010, voters be required to use either the Real ID card, which Congress this spring mandated as the driver's license of the future in all states. For about 12 percent of eligible voters who do not have a driver's license, the commission says states should provide at no cost an identification card that contains the same key information.

Critics of voter ID cards say the requirement could raise privacy issues and intimidate or discourage some Americans, particularly the elderly, the poor and minorities, from participating in elections. To alleviate those concerns, the Carter-Baker commission urges states to make it easy for non-drivers to obtain such cards and seeks measures to ensure privacy and security for all voters. The commission report states that by adopting a uniform voter ID card, minorities would be better protected from shifting identification standards at individual polling places.

Still, the proposed ID card drew sharp dissent from some commissioners, among them former Senate Democratic leader Thomas A. Daschle (S.D.). In a dissent joined by two other commissioners, Daschle likened the ID to a "modern day poll tax."

Both parties engaged in massive voter registration drives in 2004, but inaccurate voter lists produced many of the disputes on Election Day. The 2002 election reform act mandated states to oversee voter lists, but the commission said that some states are still relying too much on the counties to produce the data and called on states to take responsibility for the lists' accuracy.

The 2002 act required the use of provisional ballots for any eligible voter who shows up at a polling place but whose name is not on a registration list, but the 2004 election produced disparate standards for determining which of those ballots were counted. Alaska counted 97 percent of its provisional ballots, but Delaware counted 6 percent, according to the commission. The group recommends that states set uniform standards.

Approximately 9 million Americans move from one state to another in any given year. The commission cited news reports asserting that almost 46,000 voters from New York City were also registered in Florida. The panel recommended that the U.S. Election Assistance Commission oversee a system to allow easy sharing of state voter databases as well as requiring the use of a uniform identifier -- the voter's Social Security number -- to help eliminate duplicate registrations.

The Florida recount in 2000 etched the image of the "hanging chad" in the minds of many Americans and spurred the shift to electronic, rather than paper, ballots. But flaws in these new computerized systems have led to doubts about their accuracy. The commission calls on Congress to require that all electronic machines include the capacity for a paper trail that voters can use to verify their vote. Beyond that, to alleviate concerns that machines can be maliciously programmed or hacked, the commission calls for new standards to verify that machines are secure.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.

The integrity of the Ohio system was challenged in part because the chief election official, Secretary of State J. Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The commission also included other recommendations that have been proposed before, including free television time for political candidates, a request that broadcast networks refrain from projecting any results until the polls have closed in the 48 contiguous states and that both parties shift to a system of four regional primaries to pick their nominees.

The Commission on Federal Election Reform was created under the auspices of American University's Center for Democracy and Election Management. The group was funded by several foundations, and Robert A. Pastor of American University served as executive director. Its membership included Republicans, Democrats and independents.

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Bipartisan commission proposes election reforms

<http://www.contracostatimes.com/mld/cctimes/news/12684624.htm>

Posted on Mon, Sep. 19, 2005

By David E. Rosenbaum

NEW YORK TIMES

WASHINGTON - A private commission led by former President Jimmy Carter and former Secretary of State James Baker is proposing new steps to strengthen state election procedures and recommending that Congress require the political parties to hold four regional presidential primaries in election years rather than allowing states to hold primaries whenever they wish.

The bipartisan panel, called the Commission on Federal Election Reform, said it was responding to flaws in the system exposed by the elections of 2000 and 2004.

"We should have an electoral system where registering to vote is convenient, voting is efficient and pleasant, voting machines work properly, fraud is deterred and disputes are handled fairly and expeditiously," the commission declared.

Carter and Baker, a top official under presidents Ronald Reagan and George H.W. Bush, plan to deliver the report today to President Bush and congressional leaders.

It went to news organizations last week with the understanding that the material would not be published until today.

"The American people are losing confidence in the system, and they want electoral reform," Carter said in a statement.

These are the main recommendations:

- States, not local jurisdictions, should be in charge of voter registration, and registration lists in different states should be interconnected so voters could be purged automatically from the rolls in one state when they registered in another.
- Voters should be required to present photo ID cards at the polls, and states should provide free cards to voters without driver's licenses.
- States should make registration and voting more convenient with such innovations as mobile registration vans and voting by mail and on the Internet.

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- Electronic voting machines should make paper copies for auditing.
- In presidential election years, after the Iowa caucuses and New Hampshire primaries, the other states should hold regional primaries and caucuses at monthly intervals in March, April, May and June, with the order rotated.

The recommendations sought to strike a balance between the parties' priorities. Republicans worry about voter fraud and favor photo IDs. Democrats support easier registration and ballot access.

In the aftermath of the debacle in Florida in 2000, which put the outcome of the presidential election in doubt for more than a month, a public commission headed by Carter and former President Gerald Ford recommended an overhaul of the nation's election system.

Many of the commission's proposals, including provisional ballots for those whose eligibility was challenged, became part of the Help America Vote Act, which Congress approved and Bush signed in 2002.

But the 2004 election exposed more flaws.

Some election offices did not properly process registration applications or mail absentee ballots on time. There were reports of voter intimidation and complaints that registration lists had been improperly purged. Computers malfunctioned. Evidence of voter fraud arose.

Accusations of fraud and misconduct were rife after the race for governor in Washington. Christine Gregoire finished ahead by 129 votes, and the legal challenge was not resolved until June.

Another change designed to restore confidence in elections calls for moving to nonpartisan and independent administration of elections, in the states and on the U.S. Election Assistance Commission.

The integrity of the Ohio system in 2004 was challenged in part because the chief election official, Secretary of State Kenneth Blackwell, also served as the Ohio co-chairman for the Bush-Cheney campaign.

The new panel was organized by American University to address those problems. Its 21 members include politicians from both parties and others with elections experience.

In the 2004 campaign, state primaries and caucuses were held earlier than ever, and the nominees were effectively chosen by March.

Everything happens so quickly now in primary campaigns, the commission asserted, that "most Americans have no say in the selection of presidential nominees."

The commission said it was worthwhile for Iowa and New Hampshire to continue to vote first because "they test the candidates by genuine retail, door-to-door campaigning."

But four regional contests afterward, the panel said, would "expand participation in the process" and "give voters the chance to closely evaluate the presidential candidates over a three- to four-month period."

Washington Post contributed to this story.

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Wanna buy a bus? A voting booth?

http://www.registerbee.com/servlet/Satellite?pagename=DRB/MGArticle/DRB_BasicArticle&c=MGArticle

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&cid=1031785144388

By GERALD WITT
Register & Bee staff writer
Monday, September 19, 2005

DANVILLE, Va. - Some of them wind up at the bottom of the ocean, but Danville is going to auction its retired voting machines on Saturday.

Since the 2002 Help America Vote Act requires localities to get updated polling systems, the question of what to do with the old lever machines arises.

"In Florida some used them to sink offshore for artificial reefs," said Brian Hancock, research specialist for the U.S. Election Assistance Commission, about the old voting machines that are being replaced by lighter, smaller computerized systems.

For their part, Danville officials hope to sell the city's 46 machines - alongside old fleet cars, a bus, dump trucks and lawn mowers - at a surplus auction at 10 a.m. on Sep. 24.

The voting machines are the same behemoths with curtains that were bought in 1957 and used for decades in the city, according to David Parrish, management analyst for Danville.

"They stopped making the machines in 1980," Parrish said. "And I've seen pictures of other machines that are from the '50s and '60s that are identical to what we have."

Manufactured by Automatic Voting Machine Corp. of Jamestown, N.Y., the lever machines were used in elections throughout the United States by the mid-1900s.

In 1944 the company's advertising claimed that 12 million voters used their machines, according to a Web site maintained by Douglas W. Jones, associate professor for the University of Iowa's Department of Computer Science and a principal investigator with ACCURATE - A Center for Correct, Usable, Reliable, Auditable and Transparent Elections, funded by the National Science Foundation.

When the machines were taken out of production they were cannibalized for parts. Some of Danville's units are refurbished with those parts, Parrish said.

But after the 2000 election and the following HAVA legislation, the machines had to go. The lever machines were last used in Danville for the 2004 election, he said. They still contain cards showing presidential candidates George W. Bush and John Kerry.

When expanded, the machines are about 7 feet tall and weigh more than 500 pounds. The new electronic touch-screen polling machines can fit in a suitcase.

As the old ones are removed from service, they end up being used in a number of ways. Most are just trashed, Parrish said, suggesting that they could be stripped to make a small workstation or other enclosed space.

Given some creativity, the lighted units could have a variety of second lives.

Or a history buff could show up at the Danville auction and have one loaded on a truck as a memento of one hotly contested election.

"In 10, 15 or 20 years there's not going to be very many of them left at all," Parrish said. "Everybody's getting rid of them."

No opening bid has been set, but it seems the machines may go cheap.

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"If they don't sell, we'll call up Florida and see if they want some more reefs," he said.

Contact Gerald Witt at gwitt@registerbee.com or at (434) 793-2311 Ext. 3039.

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County election boards question voter-fraud study

<http://www.app.com/apps/pbcs.dll/article?AID=/20050917/NEWS/50917001>

Published in the Asbury Park Press 09/17/05

BY JAMES A. QUIRK
FREEHOLD BUREAU

The Monmouth and Ocean County boards of elections are questioning the findings of a study by the Republican State Committee that alleges potentially widespread voter fraud, including a claim that 4,755 votes were cast throughout the state last November in the names of dead people.

Officials with both boards say they want the committee's data for their own verification purposes. They said Friday that they have received no response from the state GOP committee.

At a Trenton press conference Thursday, Republican State Committee Chairman Tom Wilson said that in the 2004 election, 92 double votes were cast in Monmouth County, and 450 votes were cast in the names of those who are dead.

In Ocean County, Wilson said, the GOP study found that 79 people voted twice¹¹ and that 271 votes were cast in the names of dead people. The study found that overall, 6,572 people registered in both New Jersey and another state appeared to have voted twice in the 2004 election.

"We haven't seen that in Ocean County, that kind of duplicate voting," said Robert Giles, executive supervisor of the Ocean County Board of Elections. "The occasional duplication that may happen is a person getting an absentee ballot, not thinking they sent it, and sending a second . . . We want to see if this is just a misinterpretation of data."

Wilson said the committee has so far verified only "a handful" of the names of duplicate or dead voters that emerged from its study. Despite this, Wilson said he stands behind the study's findings.

"We gave (the state Attorney General's Office) close to 20,000 cases where double ballots were cast," Wilson said. "That's fraud ... you can't vote twice" or if you're dead.

An Asbury Park Press review of 697,000 active voters in Monmouth and Ocean counties found that 794 shared the same names and dates of birth. Of those 794, five appeared to have voted twice ... once in Monmouth and once in Ocean ... during the 2004 presidential election.

But those voters could have been different individuals who just happened to share the same names and birthdays. For example, one woman in Ocean County lived at the same address with a man who was most likely her husband. But in Monmouth County, a woman with the same name had a spouse with a different first name and age.

Both Wilson and Steve Berlin, a consultant for the Republican State Committee who formulated most of the voter data, said the limited depth of their study did not reveal a clear pattern of statewide voter fraud.

"But what we did find presented a whole room of smoke, and we brought it to (state Attorney General) Peter Harvey and asked if there's any fire there," Wilson said.

Lee Moore, a spokesman for Harvey, would only say that the Attorney General's Office is looking into the

GOP committee's allegations.

"Once we have assessed the situation, the determination will be made as to what, if any, action is required," Moore said.

Officials admit there are flaws in New Jersey's county voter registration rolls and the general election process. For example, Franklin Goldstein, administrative assistant with the Monmouth County Board of Elections, said people often do not notify the county when a loved one dies, so the deceased may remain on the county's voter registration roll for years as "inactive" until that person is verified as dead.

The same problem exists when people move from one county to another without informing the county they've left, Giles said. This problem should be eliminated, he said, when New Jersey moves to a statewide registration system, which is to happen in January, as required by the federal Help America Vote Act.

Even with these problems, John Weingart, associate director at the Eagleton Institute of Politics at Rutgers University and a former state Department of Environmental Protection assistant commissioner, said the GOP committee's finding of 54,601 duplicate voters, 4,397 double votes and 4,755 votes cast in the names of dead people is "a dramatic allegation" that's hard to believe.

The Eagleton Institute is in the middle of a study with the U.S. Election Assistance Commission to determine both if voter fraud exists on a level that could be prevented with tighter identification requirements at the polls; and if such increased requirements would cause lower-income voters ... usually registered Democrats ... to avoid the polls. So far, Weingart said, there is no data to support either theory.

"The notion that a lot of people would get together and figure out a way to vote more than once, all for a specific candidate, and have no one know about it, is hard to picture," Weingart said.

Investigations editor Paul D'Ambrosio contributed to this story.

James A. Quirk: (732) 308-7758 or jqquirk@app.com

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Allen elections director named to U.S. vote panel

<http://toledoblade.com/apps/pbcs.dll/article?AID=/20050919/NEWS09/50919010/-1/NEWS>

Article published September 19, 2005

The Toledo Blade

LIMA, Ohio – Keith Cunningham, director of the Allen County Board of Elections, has been appointed to a two-year term on the board of advisers of the U.S. Election Assistance Commission.

The 37-member commission, which was created by the Help America Vote Act of 2002, serves as a national clearinghouse and a resource for information and review of procedures relating to the administration of federal elections.

Mr. Cunningham has been director of the Allen County elections board since 1998 and is president of the Ohio Association of Election Officials.

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03/15/2006 08:21 PM

cc "Tim Vercellotti" [redacted],
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Subject Voter ID Paper --Final Draft

Karen,

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

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

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

Tom O'Neill



ReportFinalDraft.doc

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REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

1. Introduction and Report Background

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve implementation of the requirements for voters to show identification pursuant to [statute or regulation citation] It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005. The research included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting, a sample survey of local election officials, and a statistical analysis of the effects of various requirements for voter identification on turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

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

2. Voter Identification –Background and Approach of the Study

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

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

FINAL D R A F T

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

FINAL D R A F T

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

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

Summary of findings and conclusions

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

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

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

FINAL D R A F T

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

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

Recommendations for consideration and action by the EAC

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

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

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

FINAL D R A F T

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

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

FINAL D R A F T

3. Voter ID and Turnout

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

TABLE 1 -- Voter ID Requirements

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

Effect of Voter ID requirements on Turnout

Summary of Findings and Conclusions

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

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

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

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

FINAL D R A F T

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

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

Methods and Findings

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

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

FINAL D R A F T

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

Table 2 – Variation in 2004 State Turnout Based on Voter Identification Requirements

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	63.1 %	State Name	61.3 %
Sign Name	58.6 %	Sign Name	60.4 %
Match Signature	62.1 %	Match Signature	59.2 %
Provide Non-Photo ID	57.8 %	Provide Non-Photo ID	57.6 %
Provide Photo ID	57.3 %	Swear Affidavit	58.7 %
Average Turnout (All States)	59.6 %		

Voter identification requirements alone do not determine voter turnout. Other influences – demographic or political– also affect voter participation. Multivariate models that take into account other predictors place the effects of voter identification in a more accurate context. To consider that broader context, our multivariate analysis included whether the county was in a presidential battleground state or a state with a competitive race for governor or the U.S. Senate. Demographic variables included the percentage of the voting-age population in each county that was Hispanic or African-American, the percentage of county residents age 65 and older, and the percentage of the county population living below the poverty line. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

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

FINAL D R A F T

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

In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line.

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

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

The analysis revealed that voter identification requirements exerted a statistically significant, negative effect on whether survey respondents said they had voted in 2004. Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note

FINAL D R A F T

that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent respectively in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent. Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.

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

Discussion and Conclusions of the Analysis

The results presented here give evidence that tougher voter identification requirements are associated with a decline in voter participation. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election. The decline is apparent in both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements.

FINAL D R A F T

- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.
- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

The data examined in this analysis could not capture the dynamics of how identification requirements might lower turnout. Do these requirements dampen turnout because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most

FINAL D R A F T

effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers to handle questions about, and potential disputes over, voter identification requirements.

4. Litigation over Voter ID Requirements

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

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

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

FINAL D R A F T

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

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

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

FINAL D R A F T

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

FINAL D R A F T

5. Developments since 2004

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

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

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

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

State Voter Databases and Voter ID

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

FINAL D R A F T

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

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

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

6. Conclusions

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

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

FINAL D R A F T

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

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

FINAL D R A F T

Appendices

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

FINAL D R A F T

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

Court Decisions

Summary of Relevant Cases:

Challenges Prevailed:

American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004

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

Greidinger v. Davis, 1993

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

Challenges Rejected:

League of Women Voters v. Blackwell, 2004.

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

Colorado Common Clause v. Davidson, 2004

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

FINAL D R A F T

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

McKay v. Thompson, 2000

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

Kemp v. Tucker, 1975

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

Perez v. Rhiddlehoover, 1966

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

Current Litigation Concerning Voter ID Issues¹²

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

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

¹² As of January 2, 2006

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

FINAL D R A F T

APPENDIX

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- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
 - Benefits of US adopting Mexican system of identifying voters and voter registration
- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
 - Discusses HAVA, problems of 2000 election, discusses registration & identification
- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
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- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
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- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
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- Robert A. Junell, Curtis L. Seidlits, Jr. & Glen G. Shuffler, *Consideration of Illegal Votes in Legislative Election Contests*, 28 Tex. Tech L. Rev. 1095 (1997).
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 - arguments against photo ID
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 - Discusses voter registration as a way to combat fraud & several different ways to do it

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FINAL D R A F T

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- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
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Appendix

Karen Lynn-Dyson/EAC/GOV

03/17/2006 05:03 PM

To Paul DeGregorio/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Fw: Voter ID Paper --Final Draft

Mr. Chairman-

I thought you might find this detail on the study methodology helpful- it answered a number of the questions I had.

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 03/17/2006 03:59 PM —



"Tom O'neill"

03/16/2006 09:27 AM

To klynndyson@eac.gov

cc

Subject RE: Voter ID Paper --Final Draft

Karen,

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

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone at 908-794-1030.

Tom O'Neill

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

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

Sent: Thursday, March 16, 2006 9:00 AM

To: tom [redacted]

Subject: Re: Voter ID Paper --Final Draft

Tom-

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

026297

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

Regards-

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 Vercellotti314.doc

026298

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

Introduction

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

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

Types of voter identification requirements

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

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

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

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

Analysis of aggregate data

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

[Table 1 here]

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

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

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

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

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

[Table 2 here]

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

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

Comment [01]

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

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

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

[Table 3 here]

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

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

Individual-level analysis

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

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

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

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

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

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

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Results

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

[Table 4 here]

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

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

[Table 5 here]

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

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

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

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

[Table 6 here]

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

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

[Table 7 here]

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

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

[Table 8 here]

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

Comment [o2]: The turnout figures shown in the analysis of the aggregate data range of 57.3% turnout to 63.1% turnout. When using the individual data based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.
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⁸ See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.
⁹ I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.

themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

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

[Table 9 here]

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

Discussion and conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 4. Probit model of voter turnout.

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

Notes:

N = 54,973 registered voters

p < .05** p < .01** (two-tailed tests)

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

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