

Deleted: 15

- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

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

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

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, high mobility, and inadequately staffed polling places, the voting process is unlikely to function well. More people will end up casting provisional ballots. That makes the provisional voting process especially important. But if jurisdictions struggle with regular voting, how well are they likely to do with the more complicated provisional balloting process? In precincts where the voting process, in general, is managed poorly, provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

Deleted: ¶
Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors outside of the statewide factors analyzed here also influence the use of provisional ballots.¹⁶¶

¶
The Election Day Study found that jurisdictions with lower education and income tend to report more inactive voter registrations, lower voting turnout, higher number of provisional ballots case, lower average number of poll workers per polling place and greater percentage of inadequately staffed polling places. These differences in demographics and resources produce different experiences with provisional voting.¹⁶¶

Deleted: The r

Deleted: Election Day Study

Formatted: Bullets and Numbering

Deleted: ¶

Formatted: Bullets and Numbering

Deleted: P

Deleted: acts

Deleted: :

Deleted: of

Deleted: 15

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of a fundamental challenge of methodology and the lack of important information. An ideal assessment of how well provisional ballots served the needs of voters and the public interest requires knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting, their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. And information needed about the eligibility or registration status of provisional voters is also not available.

Deleted: Our recommendations for best practices are based on research into the legal framework, the national sample survey of local election officials, and statistical analysis of the use of provisional ballots in 2004. While we are confident in the quality of the research, we recognize that t

Deleted: available

Deleted: would

Deleted: an evaluation of t

Deleted: about

Deleted: across the country

Deleted: they

Deleted: the possibility of

Deleted: , on

Deleted: at the polling place

Deleted: who were

Deleted: Unfortunately, the

Deleted: each p

Deleted:

Deleted: the percentage of that number

Deleted: of provisional votes cast

Deleted: coupled with

Deleted: Similarly, h

Deleted: s an indictment of the

Deleted: ular voting rolls

Deleted: ¶

¶ What is known is

Deleted: , but for provisional ballots

Deleted: estimating

Deleted: quantitatively

Deleted: are

Deleted: s

Deleted: causes

Deleted: ¶
The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. A rough estimate of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost). Whatever the precise figure, it { ... [8]

Formatted: Font: Bold, Italic

Deleted: ¶

Formatted: Indent: Left: 36 pt

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

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

Estimates of Votes Lost In 2000 Presidential Election

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

Table 1 Cal Tech – MIT Voting Technology Project Estimates
4 – 6 million votes are lost in presidential elections due to the causes shown in the table. Registration mix-ups (e.g., name not on list) and polling place operations (e.g., directed to wrong precinct) are the causes most likely to be remedied by provisional voting.

Deleted: 15

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

Legislative Response

Indeed, several states²⁰ came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

Deleted: by amending

Deleted: The resulting legislative activity is evidence that states were less than satisfied with the effectiveness of their processes.

Formatted: Indent: Left: 36 pt

Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.²¹

Deleted: ¶
<#> ¶

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

Formatted: Bullets and Numbering

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

Deleted: <#> ¶
¶

Formatted: Bullets and Numbering

Litigation

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

Deleted: PV

Deleted: The 2004 election caused voters or other parties to seek court review of local officials' decisions.

Formatted: Normal

Deleted: of "

Deleted: ¶

Formatted: Font: (Default) Arial, 9 pt

This litigation was significant nonetheless.

Formatted: Font color: Auto

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

Formatted: Font: (Default) Arial, 9 pt

Formatted: Normal

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: 9 pt

Formatted: Font: (Default) Arial, 9 pt

²⁰ Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

Deleted: A study by t

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

Formatted: Font: Italic

Formatted: Font: (Default) Arial, 9 pt

Deleted: the

Deleted:

Formatted: Font: (Default) Arial, 9 pt

Deleted: 15

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

Deleted: First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA. (A state's decision not to count wrong-precinct provisional ballots, however, was found by the court not to violate HAVA. ¶)

Formatted: Bullets and Numbering

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

Deleted: some

Deleted: would need to

Deleted: But t

Deleted: with r

Deleted: guidance and

Deleted: .

Deleted: Because every provisional ballot counted represents a voter who, if the system had worked really well, should have voted by regular ballot, the advent of statewide registration databases is likely to reduce the use provisional ballots. The one area in which such databases may not make a difference is for those who voted by provisional ballot because they did not bring required identification documents to the polling place. Beyond that exception, even with statewide registries in every state, provisional voting will remain an important failsafe, and voters should have confidence that the failsafe will operate correctly. EAC's guidance and recommendations for best practices will provide information to allow states to adopt procedures likely to strengthen their systems.

Need for Promulgation of Best Practices

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

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

Deleted: They offer

Deleted:

Deleted: turn to

Deleted: from each state

Recommendations for Best Practices

Recent legislative activity shows that state efforts to improve the provisional voting process are underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from considering the best practices described here. By recommending best practices, the EAC will offer informed advice while respecting diversity among the states. One way to strengthen the recommendations and build a constituency for them would be for EAC to ask its advisory committee members to recommend as best practices procedures that have worked in their states.

Deleted: for consideration by all committee members. State action in response to the EAC's recommendations for best practices would be voluntary.

Deleted: 15

Self-evaluation of Provisional Voting –4 Key Questions

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

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

Deleted: with the

Deleted: process

Deleted: by and

Deleted: the possibility of

Deleted:

Deleted: is

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

Deleted: for

Best Practices For Each Step In The Process

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

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

The Importance of Clarity

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

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

Deleted: own

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

FINAL DRAFT

11/23/2005

Deleted: 15

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.²³ Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers the training and information resources they need, as for example, how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.²⁴
- States should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.²⁵ Recent legislation in Arizona indicates that the EAC's recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.²⁶

Deleted:

Deleted: ideally by legislation

A. Registration and Pre-Election Information for Voters

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

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

Deleted: guidance should reiterate

Deleted: A

Deleted: is needed to make sure that poll workers

Deleted: responsibility

Deleted: that

Deleted: Best practices in this area would include.

Deleted: , f

Deleted: was

Formatted: Underline

Deleted: as

Deleted: would not be an issue

Deleted: followed the practice of

Deleted: ing

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font color: Auto

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

²⁴ See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

²⁶ *The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1075-76 (N.D. Fla. 2004). The court explained that provisional voting is designed to correct the situation that occurs when election officials do not have perfect knowledge and when they make incorrect determinations about eligibility (the "fail-safe" notion). Denying voters provisional ballots because of on-the-spot determinations directly contradicts this idea. Even before the cited decision, the Florida Secretary of State's office had determined that any voter who makes the declaration required by federal law is entitled to vote a provisional ballot, even if the voter is in the wrong precinct.

²⁷ Websites in 29 states describe, with varying degrees of specificity, the identification voters may need. In 18 states voters can learn something about the precinct in which they should vote. And in 6 states (California, District of Columbia, Kentucky, Michigan, North Carolina, and South Carolina), they can verify their registration on the website.

FINAL DRAFT

11/23/2005

Deleted: 15

2. The process to re-enfranchise felons should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic, or no more burdensome than the process required for any new registrant.²⁸

Deleted:
Deleted: ment for
Deleted: process

3. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate registration and the casting of a regular ballot. An 800 number should also be provided. Models are available: the statewide databases in Florida and Michigan provide voters with provisional voting information, registration verification and precinct location information.

Deleted: For example,

B. At the Polling Place

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

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

Deleted: This
Deleted: prove
Deleted: ful for
Deleted: ing
Deleted: , and other states can benefit from this example.

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

3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."³¹ At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the

Formatted: Font color: Auto

Deleted: the voters in

²⁸ The Century Foundation, op. cit.

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

³⁰ 2005 N.M. Laws 270 page no. 4-5.

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

Formatted: Font: (Default) Arial, 9 pt

Formatted: Font: (Default) Arial, 9 pt, Font color: Red

FINAL DRAFT

11/23/2005

Deleted: 15

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

- 4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.³³

Formatted: Normal, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

C. Evaluating Voter Eligibility and Counting Provisional Ballots

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted. The recognition of the validity of those criteria is important to establishing the legitimacy of the system as a whole. The experience in 2004 in North Carolina, Washington, and Ohio underline the importance of clear criteria. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation."³⁴ Nonetheless, the *Panio v. Sutherland*³⁵ decision in New York shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.

Deleted: that are cast

Deleted: clarity in the

Deleted: to be used in deciding if a provisional ballot should be counted.

- 1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted

Deleted: 30

³² Connecticut: "Equal to or not less than 1% of the number of electors who are eligible to vote in any given district, or such other number as the municipal clerk and the registrars agree is sufficient to protect voting rights. Conn. Gen. Stat. Ann. § 9-232j. Delaware: Each County Department of Elections Office is required to provide to each election district a number of provisional ballots equal to 6% of registered voters in that district, with a minimum allocation of 15 ballots. Additional supplies to be delivered when the supply becomes "very low." Del.Code Ann. Tit 15 § 4948(e).

Formatted: Normal

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

Deleted: ¶

³⁴ The Century Foundation, op. cit.

Deleted: ¶

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

³⁷ In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104.

Deadlines in other states are: Alabama -- 5:00 P.M. on the Monday following the election AL ST § 17-10A-2(c)(1) Florida: until 5:00 P.M. on the third day following the election . Fla. Stat. Ann. § 101.048 (adopted after the 2004 election); Georgia—no later than 2 days after the election. GA ST § 21-2-417; 419. Illinois- 2 days to submit additional information 10 Ill. Comp. Stat. Ann. 5/18A-15(d); Indiana— in 2004 the deadline was the close of the polls IN. ST. §. 3-11.7-5-2(a). The time period was extended to 13 days by the adoption of Indiana Code 3-11-8, Section 25, Subsection (l); Maryland—until the meeting of the Election Board; MD ELEC LAW § 11-303. New Jersey— until the close of business on the second day after the election 19:53C-3(j). Nevada— until 5:00 P.M. on the Friday following the election NV ST 293.3085; New Mexico—until 7:00 P.M. on Election Day NM ADC 1.10.22 (8) (H).

FINAL DRAFT

11/23/2005

Deleted: 15

and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.³⁷

Deleted: n individual

- 2. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct.³⁸ The best practice may be to count provisional ballots even if they are cast in the wrong precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. See the experience in Los Angeles County with the difficulties in evaluating out-of-precinct ballots described earlier in this report.
- 3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot correct polling site even if at the wrong precinct within that location.³⁹
- 4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.⁴⁰

Deleted: define "jurisdiction" more broadly than the precinct.

Deleted: but

Deleted: in footnote 14 above.

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

- RFS (Rejection federal or state) No federal or state candidates or issues to duplicate.
- RNS (Rejection not signed) Provisional Ballot Affidavit not signed.
- RIN (Rejection incomplete information provided) Required information is incomplete and the designated election official is unable to confirm voter's eligibility.
- RNR (Rejection not registered) Voter did not register by the voter registration deadline or by emergency registration, Colorado voter registration record was not found, or voter was previously cancelled and has not been reinstated pursuant to 1-2-605(10). C.R.S.
- REE (Rejection envelope empty) Provisional ballot envelope is empty.
- RAB (Rejection voter voted absentee) Designated election official has confirmed that voter voted an absentee ballot.
- REV (Rejection based on ballot cast in early voting) Voter voted early.

³⁸ See Andersen, op. cit, pgs. 23 – 24 for an analysis of the significant effect of counting out-of-precinct ballots. The Election Day Survey found that, "Most notably, jurisdictions that permitted jurisdiction-wide acceptance of provisional ballots reported higher rates of provisional ballots being cast, but also reported a much higher incidence of provisional ballots being counted, than other jurisdictions."

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

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

Deleted: See also t

Deleted: Election Day Study

Formatted: Normal, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Deleted: ¶

FINAL DRAFT

11/23/2005

Deleted: 15

- RIP (Rejection based on incorrect party) Incorrect Party in Primary Election.
- RFE (Rejection felon not eligible to vote) Individual was convicted of a felony and is either serving a sentence of confinement or detention or is on parole.
- RWC (Rejection elector not registered in county or State of Colorado) Non-county or non-state resident; therefore voter not eligible to vote in the county where the provisional ballot was voted.
- RID (Rejection first time voter has not supplied identification upon registration or thereafter prior to and during time voter voted) First Time Voter who registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.
- RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

D. Verification of Provisional Ballots

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. States should consider in particular how to divide the time allowed them by the safe-harbor provisions that apply in presidential elections to the certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The best practice here is for states to consider the issue and make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

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

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

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

Deleted: (
Deleted:)

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system. Pending such a review, the EAC can recommend that states take the following actions.

Deleted: it can
Deleted: the

1. Recognize that the first step to improving quality is to see the provisional voting process as a system and take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.

2. States should begin by collecting data systematically on the provisional voting process so that they can evaluate their voting system and assess changes from one election to the next. The effort should start in the 2006 election, and the data collected should include:

Deleted: systematically
Deleted: in a form that would enable them to
Deleted: This

- Provisional votes cast and counted by jurisdiction, say counties, with details on why the voter had to vote provisionally (Jack of ID, not on list, challenged at polling place, issued absentee ballot, etc) and number of ballots actually counted in each category.
- Reasons why provisional ballots were not counted, using categories such as those that have been adopted by Colorado, described earlier in this report.
- Measures of variance among jurisdictions.
- Number of poll workers trained in administration of provisional voting by polling place
- Number of jurisdictions posting information on provisional voting in the polling place
- Time required to evaluate ballots by jurisdiction

Deleted: s
Formatted: Font: (Default) Arial, 11 pt
Deleted: ¶
Deleted:

Deleted: 15

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

Conclusion -- Research-based, continuing improvements for provisional voting are needed

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Deleted: ¶

Formatted: Font color: Red

Formatted: Bullets and Numbering

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

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

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

Formatted: Bullets and Numbering

1. Survey of 400 local (mostly county) election officials to learn their views about the administration of provisional voting and to gain insights into their experience in the 2004 election.
2. Review of news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.
3. Statistical analysis of provisional voting to determine associations between the use of provisional voting and such variables as states' experience with provisional voting, use of statewide registration databases, counting out-of-precinct ballots, and use of different approaches to voter identification
4. Collection and review of the provisional voting statutes and regulations in all 50 states.
5. Analysis of litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Deleted: ¶

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

Deleted: ¶

ATTACHMENT 1 – Characteristics of the Provisional Voting ProcessClassification of the States

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

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

Formatted: Bullets and Numbering

Comment [01]:

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

Please note that:

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

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

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

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

New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting⁴¹ and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

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

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

Formatted: Bullets and Numbering

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

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

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

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

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

Statewide List of Registered Voters

The Electionline preview of the 2004 Election⁴² was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

⁴² "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

Table 2
CATEGORIZATION OF STATES – Statewide Registration Database

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

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

Comment [04]:

Out-of-Precinct Ballots

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

Table 3		
CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots		
Out-of-Precinct	In-Precinct Only	HAVA EXEMPT OR NA
<u>Alaska</u>	<u>Alabama</u>	<u>Idaho</u>
<u>Arkansas</u>	<u>Arizona</u>	<u>Maine</u>
<u>California</u>	<u>Colorado</u>	<u>Mississippi</u>
<u>Delaware</u>	<u>Connecticut</u>	<u>New Hampshire</u>
<u>Georgia</u>	<u>District of Columbia</u>	<u>North Dakota</u>
<u>Illinois</u>	<u>Florida</u>	<u>Wisconsin</u>
<u>Kansas</u>	<u>Hawaii</u>	<u>Wyoming</u>
<u>Louisiana</u>	<u>Indiana</u>	
<u>Maryland</u>	<u>Iowa</u>	
<u>New Mexico</u>	<u>Kentucky</u>	
<u>North Carolina</u>	<u>Massachusetts</u>	
<u>Oregon</u>	<u>Michigan</u>	
<u>Pennsylvania</u>	<u>Missouri</u>	
<u>Rhode Island</u>	<u>Montana</u>	
<u>Utah</u>	<u>Nebraska</u>	
<u>Vermont</u>	<u>Nevada</u>	
<u>Washington</u>	<u>New Jersey</u>	
	<u>New York</u>	
	<u>Ohio</u>	
	<u>Oklahoma</u>	
	<u>South Carolina</u>	
	<u>South Dakota</u>	
	<u>Tennessee</u>	
	<u>Texas</u>	
	<u>Virginia</u>	
	<u>West Virginia</u>	
17	26	7

Voter Identification

We relied on Electionline studies, including the Voter Identification study⁴³ and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.⁴⁴ The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

Table 4
CATEGORIZATION OF STATES -- Forms of Identification Required

⁴³ This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>
⁴⁴ In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

FINAL DRAFT

11/23/2005

Deleted: 15

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

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

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

Comment [05]: Again, this would work better as a table.

Verification Method

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

Table 5

CATEGORIZATION OF STATES -- Ballot Evaluation Methods

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

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

Data Collection

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

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

Table 6	
Updated information by State	
<u>Received Updated Data</u>	<u>Did Not Receive Updated Data</u>
<u>California</u>	<u>Alabama</u>
<u>District of Columbia</u>	<u>Alaska</u> ⁴⁵
<u>Florida</u>	<u>Arizona</u>
<u>Hawaii</u>	<u>Arkansas</u>
<u>Indiana</u>	<u>Colorado</u>
<u>Iowa</u>	<u>Connecticut</u>
<u>Kansas</u>	<u>Delaware</u>
<u>Louisiana</u>	<u>Georgia</u>
<u>Maryland</u> ⁴⁶	<u>Idaho</u>
<u>Missouri</u>	<u>Illinois</u>
<u>Montana</u>	<u>Kentucky</u>
<u>Nebraska</u> ⁴⁷	<u>Maine</u>
<u>Nevada</u>	<u>Massachusetts</u>
<u>New Jersey</u>	<u>Michigan</u>
<u>New Mexico</u>	<u>Minnesota</u>
<u>Ohio</u>	<u>Mississippi</u>
<u>Oklahoma</u>	<u>New Hampshire</u>
<u>Oregon</u>	<u>New York</u>
<u>Pennsylvania</u>	<u>North Carolina</u>
<u>Rhode Island</u>	<u>North Dakota</u>
<u>South Dakota</u>	<u>South Carolina</u>
<u>Tennessee</u>	<u>Utah</u>
<u>Texas</u>	<u>Vermont</u>
<u>Virginia</u>	<u>Wisconsin</u>
<u>Washington</u>	<u>Wyoming</u>
<u>West Virginia</u>	
<u>26 States</u>	<u>25 States</u>

⁴⁵ Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

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

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

Page 3: [1] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 3: [2] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 3: [3] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 3: [4] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 3: [5] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 3: [6] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 3: [7] Formatted	owner	11/21/2005 7:11:00 PM
Font: (Default) Arial, 9 pt		
Page 9: [8] Deleted	owner	11/21/2005 7:07:00 PM

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

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

Table 3 -- Information for Voters

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

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



Gracia Hillman /EAC/GOV

11/30/2005 04:17 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,
Ddavidson@eac.gov

cc

bcc

Subject Thursday Comm Discussion

For our private time discussions, I propose that we add the composition of the Voter Fraud/Voter Intimidation Working Group to our list of topics to discuss.

As you will recall, we did not complete the discussion because Paul was not able to participate.

025634



Gracia Hillman /EAC/GOV

12/01/2005 12:47 PM

To Margaret Sims/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,
rmartinez@eac.gov, Ddavidson@eac.gov,
klynn-dyson@eac.gov

bcc

Subject Working Group for Voter Fraud/Intimidation Project

Peg:

Following is the guidance that the commissioners are providing with respect to the composition of the working group for the Voter Fraud/Voter Intimidation project and the selection process.

8 Member Working Group

Participants to be chosen by the two consultants in consultation with you. There are two slots that will require consensus. If consensus can't be reached, then you should make the decision. If there is real disagreement among the three of you, then the commissioners will make the selection.

The participation process prescribed below provides for political balance. As always, we ask that the group be diverse with respect to participation of men, women and minorities.

4 people from the Academic , Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job. We support your recommendation that there be at least one academic in the working group to help advise and comment on the construct of the database and you should provide that guidance to Tova and Job.

2 State Level Election Officials - 1 selected by Tova and 1 selected by Job

1 Nonpartisan local election official (selected by you or by consensus among the 3 of you)

1 Representative from DOJ - you had recommended a man who was retired from the Voting Section or perhaps someone else with similar credentials to be selected by you or by consensus among the three of you. We assume that Craig Dosantos (?sp) will participate in this project as an "advisor" and therefore would not take up a slot on the working group.

I will be on travel on Friday (tomorrow), however please feel free to call me on my cell should you have questions or need additional clarification.

Many thanks for your terrific work.

Gracia M. Hillman
Chair
U.S. Election Assistance Commission
1225 New York Avenue, NW, Suite 1100
Washington, DC 20005
Tel: 202-566-3100
Fax: 202-566-1392
www.eac.gov

026635

CONFIDENTIALITY NOTICE: This email message is from a federal agency. All attachments, if any, are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this message is strictly prohibited. If you received this message in error, please notify the sender immediately by replying to this message and please delete this message from your computer.



tonyp@skypoint.com
01/10/2006 01:30 PM

To pdegregorio@eac.gov
cc
bcc

Subject Federal standards violations by election fraud industry will
not be tolerated

Mr. Tony Prokott
4017 Upton Av. S #2
Minneapolis, MN 55410-1260

January 10, 2006

Commissioners, Election Assistance Commission and
Brian Hancock, ITA Secretariat
United States Election Assistance Commission
1225 New York Avenue N.W. Suite - 1100
Washington, DC 20005

Dear Commissioners and Secretariat:

As a citizen and voter, I am writing to request that the Federal Independent Testing Authority (ITA) who inspected, for federal qualification, the software used on Diebold Optical Scan and Direct Recording Electronic (DRE) voting machines be ordered to reinspect all source code, including any code used on memory cards, looking in particular for 'interpreted' code.

'Interpreted' code is expressly banned for use on any voting systems as per the 2002 Federal Election Commission Voting System Standards Volume 1, Section 4.2.2, yet Diebold Elections Systems Inc. has admitted, in California, that they use 'interpreted' code in their AccuBasic software and it may be used elsewhere in their code.

This revelation from Diebold representatives and from documents obtained by "Freedom Of Information Act" from various sources points to a failure on the part of the ITA to use due diligence in their inspection of Diebold source code and software.

It is because of this failure on the part of the ITA and Diebold's revelations that we ask that all Diebold software/source code be reinspected by the ITA. The ITA should then report back whether the software/source code includes any 'interpreted' code and if that is the case, as Diebold has admitted, the EAC must direct that all Diebold software be decertified until such time as they can show that they have removed all such prohibited software.

This action must not stop with the Diebold products alone, as there is ample evidence that other voting systems also contain 'interpreted' code.

It must be made clear that the Voting System Standards were written by experts in the field of computer sciences and elections. The ITA have been tasked with ensuring that the voting machine vendors follow those standards or be denied federal qualification. I demand that the rules be followed by everyone.

Sincerely,

026637

Tony Prokott

026635

Bert A. Benavides/EAC/GOV
02/01/2006 11:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia
cc Amie J. Sherrill/EAC/GOV@EAC, Adam
Ambrogio/EAC/GOV@EAC, Elieen L.
Collver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC,
bcc

Subject Proposed Agendas for Comm. Discussions 2-07 and 2-09

The next Commissioners' Discussions are scheduled for **Tuesday, February 7** and **Thursday, February 9** from 10:00 AM - Noon in the small conference room. The Commissioners will hold their **private discussion from 9:30 - 10:00 AM**. After reviewing the following proposed agendas, please let me know if you have additional topics to submit for consideration and if any materials are involved. Thank you.

Proposed Agenda, Tuesday, February 7

- | | |
|---|---|
| 1. AZ Letter - continuation (Julie/Gavin) | Materials included as attachment for the 1/31
Comm. Discussion on Mon., January 30 |
| 2. Management Guidelines (Brian) | Document attached |
| 3. UOCAVA Update (Karen) | Materials to distribute (tbd) |



Recommended Priorities for 2006 - revised.doc

Proposed Agenda, Thursday, February 9

- | | |
|--|-------------------|
| 1. Policy and Procedures Manual (Tom/Diana) | Document attached |
| 2. Eagleton Provisional Voting Draft (Karen) | Document attached |



EAC-AdministrativeManual.doc



Eagleton Provisional Voting Draft.doc

Bert A. Benavides
Special Assistant to Executive Director Thomas Wilkey
U. S. Elections Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
202.566.3114 direct line
202.566.1389 fax

025639

Presented to: ELECTION ASSISTANCE COMMISSION

Management Guidelines for Election Administration

Outline of Proposed 2006 Priorities

INTRODUCTION

CERTIFICATION

- EAC federal certification process and procedures
- State certification – summary of processes – in non-state specific format

SECURITY

System Security

- Election tabulation computer hardware configuration
- Password maintenance
- Log in books
- Video cameras
- Hash code on ITA version/validation against systems in the field – NSRL procedures
- Software escrow
- Backups
- Tamper tape
- Tamper-resistant transport bags
- Seals, individually-keyed locks
- Ballot printing security and quality control

Physical Security

- Facility
- Security Cages
- Supply distribution
- Chain of Custody
- Blank ballot stock
- Ballot on Demand
- Voted Ballots
- Accessories, pieces and parts
- Inventory control

PRE-ELECTION TESTING

Logic & Accuracy – Public observation (definitions, instructions, public handout)
(small scale parallel test)

Optical scan

- Vendor provided ballot deck and results
- Calibration tests
- Pen/pencil specific
- Oval/ballot markings – (will they count or not count)
- Ballot stock (storage of paper) (toner residue)
- Folds on ovals
- Timing Marks – markings outside of ovals
- Precinct count
 - Over/under votes
 - Blank ballots
 - Pattern vote testing
- Central count

Direct Recording Electronic (DRE) Voting Machines

- Audit trail (description and sample forms)
- Manual L&A on each machine
- Pattern vote testing
- Audio Ballot

End-to-end system testing

- Backup copy
- Audit trail
- Tamper-proof seals
- Security for storage

Hardware testing

- Optical Scan
- DRE

Parallel testing

- Optical Scan
- DRE

First draft tentatively due 6/1/06

Final release after EAC approval tentatively scheduled for 8/1/06

Bert A. Benavides/EAC/GOV
02/03/2006 03:34 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia
cc Amie J. Sherrill/EAC/GOV@EAC, Adam
Ambrogi/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,
bcc

Subject FINAL Agendas for Comm. Discussions 2-07 and 2-09

The next Commissioners' Discussions are scheduled for **Tuesday, February 7** and **Thursday, February 9** from **10:00 AM - Noon** in the small conference room. The Commissioners will hold their **private discussion** from **9:30 - 10:00 AM**. The following is the FINAL agenda for next week's discussions. Thank you.

If responding to this e-mail after 5:00 PM today, Friday, February 3, please include Nicole in your response to me as I will be out of the office attending COR Training next week . Nicole will be facilitating the Commissioners ' Discussions next week and will also be the recipient for the Weekly Project Report due by COB Wednesday , February 8. Thank you.

FINAL Agenda, Tuesday, February 7

- | | |
|-----------------------------------|---|
| 1. AZ Letter cont'd (Julie/Gavin) | Materials included as attachment for the 1/31
Comm. Discussion on Mon., 1/30 |
| 2. Management Guidelines (Brian) | Document attached |
| 3. UOCAVA Update (Karen) | Materials to distribute (tbd) |
| 4. Open Meetings (Julie) | Mateials to be distributed no later than COB Monday,
Feb. 06 |



Recommended Priorities for 2006 - revised.doc

FINAL Agenda, Thursday, February 9

- | | |
|--|-------------------|
| 1. Policy and Procedures Manual (Tom/Diana) | Document attached |
| 2. Eagleton Provisional Voting Draft (Karen) | Document attached |



EAC-AdministrativeManual.doc



Eagleton Provisional Voting Draft.doc

Bert A. Benavides
Special Assistant to Executive Director Thomas Wilkey
U. S. Elections Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
202.566.3114 direct line

026642

202.566.1389 fax

026643



Nicole
Mortellito/CONTRACTOR/EAC
/GOV

03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, Adam

bcc

Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

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

026644



Gracia Hillman/EAC/GOV

03/02/2006 01:57 PM

To klynn-dyson@eac.gov

cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, DeAnna M.

bcc

Subject Re: Eagleton close-out meeting 

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

026645

Karen Lynn-Dyson/EAC/GOV
03/02/2006 02:04 PM

To Gracia Hillman/EAC/GOV@EAC
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, DeAnna M.
bcc
Subject Re: Eagleton close-out meeting

Commissioner-

Given travels costs and the number of persons involved from the Eagleton/Moritz team, the idea was to do the two meetings in the same day.

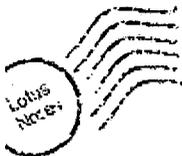
However, I could ask Nicole to determine if there is a day in March that might work with your schedule.

I am very reluctant to schedule a meeting later in April as the contract is technically over March 31 (a Friday). April 3 is the following Monday.

Please advise. Thanks

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

Gracia Hillman/EAC/GOV

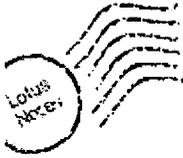


Gracia Hillman/EAC/GOV
03/02/2006 01:57 PM

To klynn-dyson@eac.gov
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, DeAnna M.
Smith/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Elieen L.
Collver/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Sheila A.
Banks/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC, Nicole
Mortellito/CONTRACTOR/EAC/GOV@EAC
Subject Re: Eagleton close-out meeting

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

026646



Gracia Hillman/EAC/GOV

03/02/2006 02:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,
rmartinez@eac.gov, Ddavidson@eac.gov, sbanks@eac.gov,
Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Re: Eagleton close-out meeting 

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

026647

Karen Lynn-Dyson/EAC/GOV
03/02/2006 02:19 PM

To Gracia Hillman/EAC/GOV@EAC, Nicole
Mortellito/CONTRACTOR/EAC/GOV@EAC
cc Ddavidson@eac.gov, Juliet E. Thompson/EAC/GOV@EAC,
pdegregorio@eac.gov, rmartinez@eac.gov,
sbanks@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Eagleton close-out meeting 

Commissioner-

I believe an earlier and a later meeting time on the same day can be accommodated.

I will ask Nicole to arrange for a morning briefing and an afternoon one.
I will also ask her to check on Commissioners' availability for the morning slot.

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

Gracia
Hillman/EAC/GOV

03/02/2006 02:08 PM To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov, rmartinez@eac.gov, Ddavidson@eac.gov,
sbanks@eac.gov, Juliet E. Thompson/EAC/GOV@EAC
Subject Re: Eagleton close-out meeting [Link](#)

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

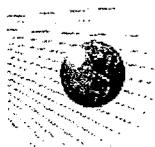
020648

Bert A. Benavides/EAC/GOV
03/02/2006 02:46 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC, Donetta L.
bcc
Subject Re: Eagleton close-out meeting

Re April 3rd Eagleton meeting: Tom is holding this time for Julie who may be scheduling a House briefing. The other held date for the House briefing is April 5.

Nicole Mortellito/CONTRACTOR/EAC/GOV



Nicole Mortellito/CONTRACTOR/EAC/GOV
03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC
Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

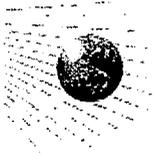
After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

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

026849



Nicole
Mortellito/CONTRACTOR/EAC
/GOV

03/08/2006 10:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,
Donetta L. Davidson/EAC/GOV@EAC, Thomas R.
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC,
Elieen L. Collver/EAC/GOV@EAC, Bert A.

bcc

Subject Eagleton Close-Out Meeting

Commissioners:

The **Eagleton Close -Out Meeting** has been scheduled for Monday, **April 3, 2006**. As requested, the delegation from Eagleton will give **two** presentations so that you may choose to attend the briefing which most readily jibes with your schedule.

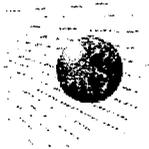
Please advise as to which session you will attend. The meetings should last approximately 45 minutes plus discussion/question and answer time.

The meeting times are either **11:00am or 2:30pm**. And will be held in the small conference room.

Regards,

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

026650



Nicole
Mortellito/CONTRACTOR/EAC
/GOV
03/08/2006 01:59 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, Donetta L.
bcc

Subject Update: Eagleton Close-Out Meeting 

Commissioners:

I have spoken with each of you or your Special Assistants and, at this time, you or they have confirmed your attendance during the following time slot for the Eagleton Briefing.

Special Assistants, if there is any change in preference please let me know.

11am

- Commissioner Hillman
- Tom Wilkey
- Commissioner Davidson

2:30pm

- Chairman DeGregorio
- Vice Chairman Martinez
- Juliet Hodgkins

Regards,

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

026651

Calendar Entry

Meeting Invitation Nicole Mortellito has invited you to a meeting

Subject	Eagleton Close-out Meeting - Provisional Voting	Chair	Nicole Mortellito/CONTRACTOR/EAC/GOV
When	Date Thursday 03/09/2006 Time 09:15 AM - 10:15 AM (1 hour)	Invitees	Juliet E. Required (to) Thompson-Hodgkins/EAC/GOV@EAC. Karen Optional (cc)
Where	Small Conference Room		

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

026652

Calendar Entry

Meeting Change Nicole Mortellito has rescheduled this meeting

Subject	Eagleton Close-out Meeting - Provisional Voting	Chair	Nicole Mortellito/CONTRACTOR/EAC/GOV
When	Date Monday 04/03/2006 Time 02:30 PM - 04:00 PM (1 hour 30 minutes)	Invitees	Juliet E. Thompson-Hodgkins/EAC/GOV@EAC. Karen
Where	Small Conference Room	Required (to)	
		Optional (cc)	

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

026653

Calendar Entry

Meeting Change Nicole Mortellito has rescheduled this meeting

Subject	Eagleton Close-out Meeting - Provisional Voting	Chair	Nicole Mortellito/CONTRACTOR/EAC/GOV
When	Date Monday 04/03/2006 Time 02:30 PM - 04:00 PM (1 hour 30 minutes)	Invitees	Juliet E. Thompson-Hodgkins/EAC/GOV@EAC. Karen
Where	Small Conference Room	Required (to)	
		Optional (cc)	

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

026654

Karen Lynn-Dyson/EAC/GOV

03/16/2006 09:57 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,
Donetta L. Davidson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,
bcc

Subject Fw: Voter ID Paper --Final Draft

History

This message has been forwarded.

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

Regards-

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM —



"Tom O'Neill"

03/15/2006 08:21 PM

To klynndyson@eac.gov

cc "Tim Vercellotti" <timvercellotti@eac.gov>, arapp@eac.gov, davander@eac.gov, dlinky@eac.gov, jreed@eac.gov, joharris@eac.gov, john.weingart@eac.gov, rmandel@eac.gov, Johanna Dobrich <jdobrich@eac.gov>, tokaji.1@eac.gov, .33@eac.gov, lauracw@columbus.in.com

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

026655

comments you would like us to consider, that meeting would be a most convenient occasion to discuss them.

Tom O'Neill



ReportFinalDraft.doc

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

026680

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

025881

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

Annotated Bibliography on Voter Identification Issues

Law Journals

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

Historical articles:

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

FINAL D R A F T

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

Marginally relevant/limited discussion of Voter ID issues

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

Political Science Literature

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL DRAFT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINAL D R A F T

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

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

FINAL D R A F T

Appendix



Paul DeGregorio /EAC/GOV
03/17/2006 04:46 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV
bcc
Subject Re: Voter ID Paper --Final Draft

Karen,
Are we allowed to make comments on this paper in which they might consider changes --or is this the final version that we are to "accept" as is?
Paul

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 03/16/2006 08:57 AM
To: Paul DeGregorio; Raymundo Martinez; Gracia Hillman; Donetta Davidson
Cc: Thomas Wilkey; Juliet Thompson-Hodgkins; Amie Sherrill; Adam Ambrogi; Sheila Banks; Elieen Collver
Subject: Fw: Voter ID Paper --Final Draft

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

Regards-

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM -----



"Tom O'neill"
~~tom_o'neill@verizon.net~~
03/15/2006 08:21 PM

To klynndyson@eac.gov
cc "Tim Vercellotti" <timvercellotti@psu.edu>, arapp@psu.edu, davander@psu.edu, dlinky@psu.edu, ireed@psu.edu, joharris@psu.edu, john.weingart@psu.edu, rmandel@psu.edu, "Johanna Dobrich" <jdobrich@psu.edu>, tokaji.1@psu.edu, toley.33@psu.edu, w@psu.edu
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

Karen Lynn-Dyson/EAC/GOV
03/17/2006 04:48 PM

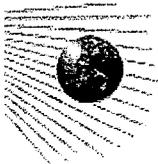
To Paul DeGregorio/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Voter ID Paper --Final Draft

I think it would be great if you could/would make comments and suggestions. I've read through the document today and have several suggestions, myself.

Would be great if I could pass all of them along to Eagleton by mid-week next week.

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

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV
03/17/2006 03:46 PM

To Karen Lynn-Dyson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV
Subject Re: Voter ID Paper --Final Draft

Karen,
Are we allowed to make comments on this paper in which they might consider changes --or is this the final version that we are to "accept" as is?
Paul

Sent from my BlackBerry Wireless Handheld
Karen Lynn-Dyson

From: Karen Lynn-Dyson
Sent: 03/16/2006 08:57 AM
To: Paul DeGregorio; Raymundo Martinez; Gracia Hillman; Donetta Davidson
Cc: Thomas Wilkey; Juliet Thompson-Hodgkins; Amie Sherrill; Adam Ambrogi; Sheila Banks; Elieen Collver
Subject: Fw: Voter ID Paper --Final Draft

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

026693

Regards-

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM -----



"Tom O'Neill"

03/15/2006 08:21 PM

To klynndyson@eac.gov

cc "Tim Vercellotti" <tim.vercellotti@rutgers.edu>, arapp@rci.rutgers.edu, davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, ireed@rutgers.edu, joharris@eden.rutgers.edu, john.weingart@rutgers.edu, rmandel@rci.rutgers.edu, "Johanna Dobrich" <jdobrich@eden.rutgers.edu>, tokaji.1@osu.edu, foley.33@osu.edu, lauracw@columbus.rr.com

Subject 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

026693

Karen Lynn-Dyson/EAC/GOV
03/22/2006 06:04 PM

To Bert A. Benavides/EAC/GOV@EAC
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, Brian

bcc

Subject 

All-

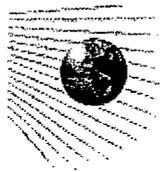
About a week ago you received a copy of the Eagleton draft report on Voter Identification. As you know, Eagleton will be coming to EAC on April 3 to do a project close-out meeting with the agency.

Should you have comments or edits that you would like me to pass along to Eagleton, regarding their draft report on Voter ID, please get them to me by **COB Friday, March 24**. so that I may pass them along to Eagleton for inclusion in their final document.

Thank you

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

026700



Paul DeGregorio /EAC/GOV

03/24/2006 01:03 PM

To "Donetta Davidson (EAC)" <ddavidson@eac.gov>

cc

bcc

Subject Can you call me?

I'd like to talk with you about Jeff Way and about the Eagleton I'd report. Thanks.

Sent from my BlackBerry Wireless Handheld

026701



Paul DeGregorio /EAC/GOV

03/24/2006 06:00 PM

To Donetta Davidson (EAC)

cc

bcc

Subject Eagleton ID report

Comments regarding the Eagleton Report on Voter ID

While the report is generally acceptable, I found some parts of it to be misleading and at times appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing “long lines and limited time,” suggesting that may be a problem for them to check ID. I am not sure what their point may be as poll workers in states that require ID checking will still have to do so no matter how long the voter lines they have. Some states may not have long lines at the polls and voters may not have the “limited time” suggested in the report.

They selectively quote the Carter-Baker Commission study to suggest that “photographic ID requirements for in-person voting do little to address the problem of registration by mail” even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact.

Their table on page 7 indicates that Missouri’s current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state “Provide ID” as they did in listing CO, CN and LA).

On page 9 and in subsequent pages they make reference to “voting age population” (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP. It wasn’t clear. You may remember that Kim Brace talked about the VAP vs. CVAP issue with us extensively and indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses.

I would like to know if the new Census report on the 2004 election released this week changes any of their perspectives.

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is “widely-accepted,” it does make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

026702



Paul DeGregorio /EAC/GOV

03/26/2006 09:34 PM

To Karen Lynn-Dyson

cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV

bcc ddavidson@eac.gov

Subject Comments regarding the Eagleton Report on Voter ID

Karen,

As you requested, here are my comments regarding the final draft Eagleton report on Voter ID.

While the report is generally acceptable, I don't believe the current draft is ready to be released.

I found some parts of the report to be misleading and, at times, appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing "long lines and limited time," suggesting that may be a problem for the workers to check ID. I am not sure what their point may be, as poll workers in states that require ID checking will still have to do so, no matter how long the voter lines they have. Many states and their polling places may not have long lines at the polls, and thus voters may not have the "limited time" suggested in the report. They don't support their suggestion with hard data on long voter lines and time limits on poll workers.

They selectively quote the Carter-Baker Commission study to suggest that "photographic ID requirements for in-person voting do little to address the problem of registration by mail" even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact and the reasons why the Carter-Baker Commission comes to that conclusion.

Their table on page 7 indicates that Missouri's current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state "Provide ID" as they did in listing CO, CN and LA requirements).

On page 9 and on subsequent pages they make reference to "voting age population" (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP? It is not clear from the report. You may remember that Kim Brace discussed the VAP vs. CVAP issue with us extensively, and he indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that more stringent ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses, as Kim told us that VAP figures do not compensate for the non-citizen Hispanic voters that are included at a higher rate in the VAP (because as Kim stated most of the non-citizen population in the USA tends to be Hispanic).

I would like to know if the new Census report data on the 2004 election released on March 15, 2006 changes any of their perspectives. <http://www.census.gov/prod/2006pubs/p20-556.pdf>

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is "widely-accepted," it does make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

Considering that the beginning of the document reveals a bias towards lesser ID requirements, I believe that it is important to highlight earlier in the report the conclusion found on page 14 that concerns by critics of voter identification requirements for African-American and elderly voters "are not borne out by the results." This will provide at least some balance to the reader.

026703

On page 20 they indicate they lack good data on why voters must cast their ballots provisionally. I thought that our Election Day Survey captured some of that data.

It appears that a preponderance of their citations are from organizations or groups that support liberal positions on election issues, or take selective information from reports to support a more liberal interpretation of views on voter ID issues. Examples would include: Carter-Baker on page 1; Tova Wang on page 4; Carter-Baker on page 4; Brennan Center page 20. While many of published articles cited on pages 30 and 31 provide relatively neutral information, those that appear to take positions (read from the description of the articles) appear to favor a liberal position on most ID issues. I would have hoped they would have provided a more balanced approach. I don't see conservative writers, such as Thor Hearne, of the American Center for Voting Rights, quoted or cited once in the report. Mr. Hearne has testified before Congress and has had several articles that address voter identification issues.

I was pleased that they cited (on page 5) a recent March 15, 2006 article from the Arizona Republic that indicated that their stricter voter ID law went smoothly in its first use.

They might want to be aware (and perhaps mention) that the recommendation from Edward Foley cited on the bottom of page 21 was actually used in Haiti's recent February 7, 2006 presidential election. In addition to each voter being provided a picture ID by the election commission, that same picture was found next to the voters' name on the voter rolls that were used at the polling places. Perhaps they want to contact Scott Lansell of IFES for confirmation. The picture ID project for Haiti's election was financed and implemented by the Organization for American States (OAS). I believe turnout for that election was over 60% of those eligible.

Please let me know if you or anyone from Eagleton has questions regarding these comments. Thanks.

Paul DeGregorio
Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

026704

Karen Lynn-Dyson/EAC/GOV
03/27/2006 10:21 AM

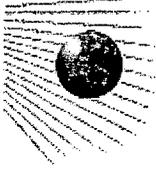
To Paul DeGregorio/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
bcc

Subject Re: Comments regarding the Eagleton Report on Voter ID 

Many thanks for your comments, Mr. Chairman. I will integrate them into the report and pass them along to the Eagleton staff.

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

026705



Paul DeGregorio /EAC/GOV

03/27/2006 02:02 PM

To Juliet Hodgkins

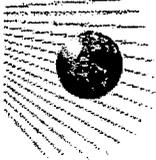
cc

bcc

Subject Fw: Comments regarding the Eagleton Report on Voter ID

fyi

— Forwarded by Paul DeGregorio/EAC/GOV on 03/27/2006 01:01 PM —



Paul DeGregorio /EAC/GOV

03/26/2006 08:34 PM

To Karen Lynn-Dyson

cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV

Subject Comments regarding the Eagleton Report on Voter ID

Karen,

As you requested, here are my comments regarding the final draft Eagleton report on Voter ID.

While the report is generally acceptable, I don't believe the current draft is ready to be released.

I found some parts of the report to be misleading and, at times, appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing "long lines and limited time," suggesting that may be a problem for the workers to check ID. I am not sure what their point may be, as poll workers in states that require ID checking will still have to do so, no matter how long the voter lines they have. Many states and their polling places may not have long lines at the polls, and thus voters may not have the "limited time" suggested in the report. They don't support their suggestion with hard data on long voter lines and time limits on poll workers.

They selectively quote the Carter-Baker Commission study to suggest that "photographic ID requirements for in-person voting do little to address the problem of registration by mail" even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact and the reasons why the Carter-Baker Commission comes to that conclusion.

Their table on page 7 indicates that Missouri's current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state "Provide ID" as they did in listing CO, CN and LA requirements).

On page 9 and on subsequent pages they make reference to "voting age population" (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP? It is not clear from the report. You may remember that Kim Brace discussed the VAP vs. CVAP issue with us extensively, and he indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that more stringent ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses, as Kim told us that VAP figures do not compensate for the non-citizen Hispanic voters that are included at a higher rate in the VAP (because as Kim stated most of the non-citizen population in the USA tends to be Hispanic).

I would like to know if the new Census report data on the 2004 election released on March 15, 2006 changes any of their perspectives. <http://www.census.gov/prod/2006pubs/p20-556.pdf>

026706

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is "widely-accepted," it does not make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

Considering that the beginning of the document reveals a bias towards lesser ID requirements, I believe that it is important to highlight earlier in the report the conclusion found on page 14 that concerns by critics of voter identification requirements for African-American and elderly voters "are not borne out by the results." This will provide at least some balance to the reader.

On page 20 they indicate they lack good data on why voters must cast their ballots provisionally. I thought that our Election Day Survey captured some of that data.

It appears that a preponderance of their citations are from organizations or groups that support liberal positions on election issues, or take selective information from reports to support a more liberal interpretation of views on voter ID issues. Examples would include: Carter-Baker on page 1; Tova Wang on page 4; Carter-Baker on page 4; Brennan Center page 20. While many of published articles cited on pages 30 and 31 provide relatively neutral information, those that appear to take positions (read from the description of the articles) appear to favor a liberal position on most ID issues. I would have hoped they would have provided a more balanced approach. I don't see conservative writers, such as Thor Hearne, of the American Center for Voting Rights, quoted or cited once in the report. Mr. Hearne has testified before Congress and has had several articles that address voter identification issues.

I was pleased that they cited (on page 5) a recent March 15, 2006 article from the Arizona Republic that indicated that their stricter voter ID law went smoothly in its first use.

They might want to be aware (and perhaps mention) that the recommendation from Edward Foley cited on the bottom of page 21 was actually used in Haiti's recent February 7, 2006 presidential election. In addition to each voter being provided a picture ID by the election commission, that same picture was found next to the voters' name on the voter rolls that were used at the polling places. Perhaps they want to contact Scott Lansell of IFES for confirmation. The picture ID project for Haiti's election was financed and implemented by the Organization for American States (OAS). I believe turnout for that election was over 60% of those eligible.

Please let me know if you or anyone from Eagleton has questions regarding these comments. Thanks.

Paul DeGregorio
Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

026707

Karen Lynn-Dyson/EAC/GOV
03/27/2006 05:53 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,
Donetta L. Davidson/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Providing feedback to Eagleton prior to next Monday's
close-out meeting

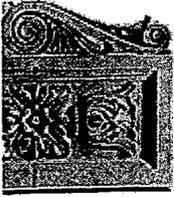
Commissioners-

I have gotten feedback on the Eagleton provisional identification research report/document and would like to pass on the general comments and questions to them **not later than COB tomorrow** .

Several of you have also suggested that **it would be good to go over , at your Thursday Commissioners meeting**, how the Commissioners will conduct the Monday meetings. You will recall that the Eagleton will conduct two sessions to accommodate the four Commissioners.

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

026708



Bert A. Benavides/EAC/GOV
03/28/2006 01:47 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Gracia
cc Roger Larouche/CONTRACTOR/EAC/GOV@EAC, Margaret
Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC,
Carrie M. Patterson/EAC/GOV@EAC, Amie J.
bcc
Subject Proposed Agenda for Commissioners' Staff Briefings 3-30,
4-04 and 4-06

The next Commissioners' Staff Briefing is **Thursday, 3-30-06 from 10:00 - 12:00 PM** in the small conference room. The private briefing is **from 9:30 - 10:00 AM**. Please review the following proposed agendas and let me know if there are additional topics you want to submit for consideration and if there are materials involved. Thanks.

Proposed Agenda, Thursday, 3-30-06

- | | |
|--|------------------------------|
| 1. SOW: Voter Registration Database (Carrie/Karen) | Memo to be distributed 3/29 |
| 2. Eagleton Draft Update (Karen) | Matls distributed 3/16 |
| 3. SOW: Voter Hotline (Edgardo) | Matls distributed 3/22 |
| 4. SOW: Katrina (Edgardo) | Matls distributed 3/22 |
| 5. Weekly Project Status Reports (Tom) | Matls to be distributed 3/29 |

Proposed Agenda, Tuesday, 4-04-06

- | | |
|---|-------------------------|
| 1. IG Update (Roger) | Matls tbd |
| 2. Policy re linking w/private voter reg. sites (Tom) | Matls to be distributed |

Proposed Agenda, Thursday, 4-06-06

- | | |
|--|------------------------------|
| 1. Certification Update (Brian) | Matls tbd |
| 2. Financial Report (Tom/Diana) | Matls to be distributed 4-05 |
| 3. Weekly Project Status Reports (Tom) | Matls to be distributed 4-05 |

Bert A. Benavides
Special Assistant to Executive Director Thomas Wilkey
U. S. Elections Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
202.566.3114 direct line
202.566.1389 fax

026709