

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.

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- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

### Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

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## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

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- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

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As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

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instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

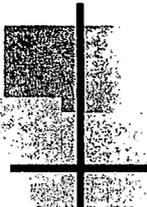
Director, Election Crimes Branch, U.S. Department of Justice

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# Best Practices in Vote Counts, Recounts, and Challenges



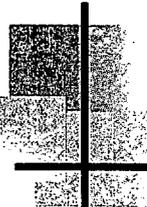
Presentation to  
EAC Standards Board  
May 24, 2006



# Research Team

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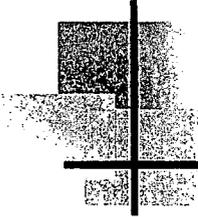
- Thad Hall, University of Utah
- R. Michael Alvarez, Caltech
- Kim Brace, Election Data Services
- Doug Chapin, *electionline.org*



# Requirement for Study

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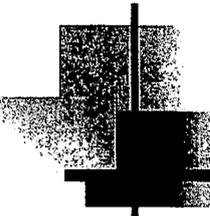
- Section 241 of the HAVA requires the EAC to conduct a study examining vote counting and recounting.
- Identify methodology for studying best practices
- Examine election laws and regulations in all 50 states and the District



# Study Overview

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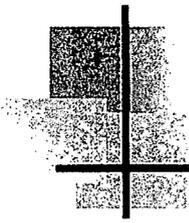
- Identified best practice methodologies
- Developed criteria for evaluating practices
- Presented the most common practices for vote counting and recounting.
- Identified “benchmark” practices that exceed the most common practices in states.
- Identified best practices for vote counts and recounts that have been implemented.



# Criteria for Studying Vote Counting and Recounting

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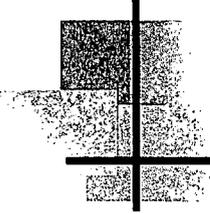
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# GAO Best Practice Methodology

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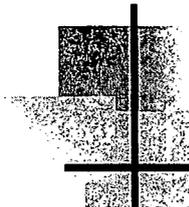
- Document existing process
- Research literature; talk to practitioners and experts
- Select comparative entities for review
- Collect data from selected entities
- Identify barriers to change
- Compare/contrast processes; develop implementation recommendations



# Best Practice Study

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- Researched existing literature on vote counting
- Developed baseline of existing activity
- Developed benchmarks for practices that exceed baseline
- Identified potential best practices for review by the EAC Commissioners
- States and localities have to do the hard work: Implementation

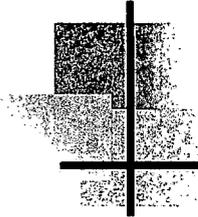


# International Principles for Vote Counting

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IFES, (IDEA), and the United Nations  
election project states:

to establish and maintain public confidence in  
the electoral process, vote counting systems  
and procedures should incorporate the  
[eight] fundamental principles of vote  
counting in a democratic election.



# Eight Principles for Vote Counting

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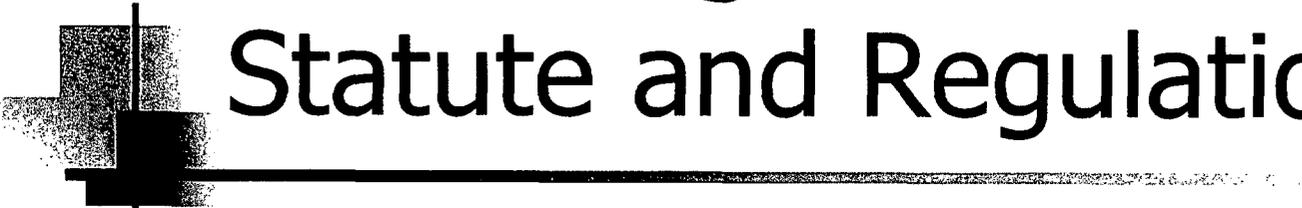
- Transparency
- Security
- Professionalism
- Accuracy
- Secrecy
- Timeliness
- Accountability
- Equality



# Common International Practice

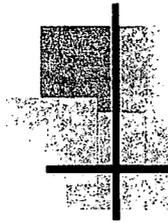
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- All ballots should be reconciled against the number of voters who cast ballots.
- Ballots are initially counted at the precinct where the vote was cast.
- There are explicit legal requirements for securing ballots.
- Recounts are allowed by request; five countries conduct 100 percent audits.
- Convenience voting is everywhere.



# Evaluating State Practices in Statute and Regulation

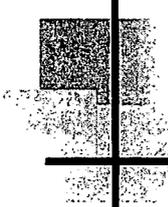
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# Developing National Baseline

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- Survey of state laws and regulations
  - Security
  - Pre-election procedures
  - Election ballot procedures
  - End of Election Procedures
  - Definition of “What Constitutes A Vote”
  - Counting and Accounting
  - Recounting
  - Challenges



# Developing National Baseline

---

- Survey of state laws and regulations
  - Identified Specific Questions
  - Reviewed Survey with EAC, Election Officials, and Outside Experts
- Collected Data
  - Statutory or Regulatory Language
  - Legal Citation



# Key Findings

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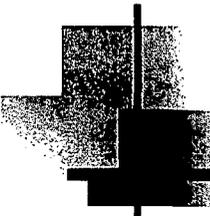
- Three issues with great variation in coherence and completeness
  - Ballot Accounting
  - Ballot Security
  - What Constitutes a Vote



# Survey Next Steps

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- Each report is being carefully reviewed and edited
- Submit surveys to states for review
- States will have interactive online survey form to note problems



# Benchmarking Election Law

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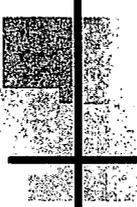
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# Benchmarking

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- Common in public and private sectors
- How does your performance stack up to similar organizations? OR
- How does your performance stack up to a pre-selected target?
  
- GOAL: Think about your practices.



# Benchmarking Practices

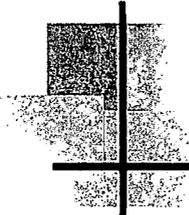
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- Using the survey data, we have identified most common practices
- For many activities, we will propose “benchmark” practices
  - Clearer,
  - More detailed, or
  - More comprehensive

# Benchmarking Example: Ballot Accounting

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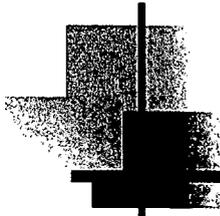
- Most Common Practice: No Standard
- Benchmark: The counting board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the poll book. If [they] cannot reconcile... [they] shall submit... a written report stating how many ballots were missing or in excess and any reason ...for the discrepancy.



# Benchmarking Limitations

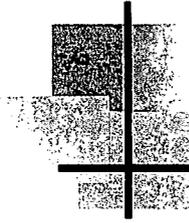
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- Not all activities can be benchmarked
- Some activities reflect political and cultural decisions by the state. For example:
  - Absentee voting
  - Handling of recounts and challenges



# Best Practices in Election Law

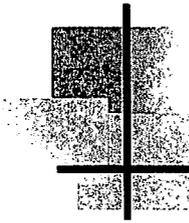
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# What are Best Practices

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- Best practices refer to the processes, practices, and systems identified in... organizations that performed exceptionally well and are widely recognized as improving an organization's performance and efficiency in specific areas.



# Effective Best Practices

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- Address a complete process
- Have been carefully charted
- Often come from organizations with similar characteristics



# Best Practices Examined

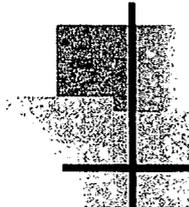
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- What Constitutes a Vote
- Accounting
- Auditing
- Security
- Transparency
  
- Issues in Challenges and Recounts

# Best Practices in Vote Counts, Recounts, and Challenges



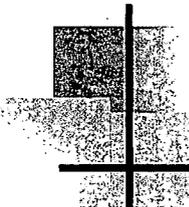
Presentation to  
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# Research Team

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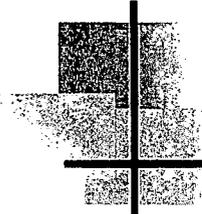
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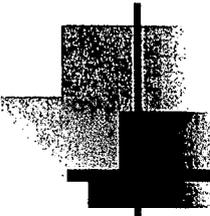
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- Identify methodology for studying best practices
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- Developed criteria for evaluating practices
- Presented the most common practices for vote counting and recounting.
- Identified “benchmark” practices that exceed the most common practices in states.
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# Criteria for Studying Vote Counting and Recounting

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# GAO Best Practice Methodology

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IFES, (IDEA), and the United Nations  
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# Eight Principles for Vote Counting

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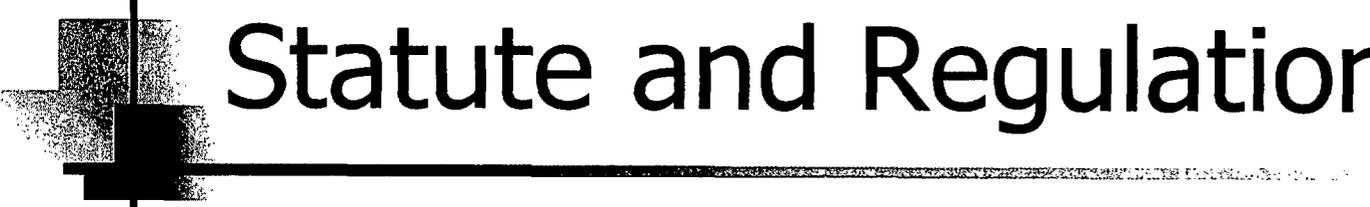
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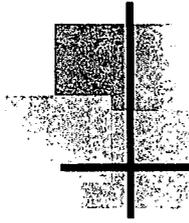
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# Developing National Baseline

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# Developing National Baseline

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# Key Findings

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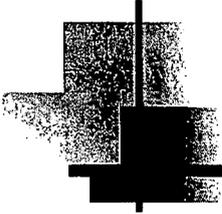
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# Benchmarking Election Law

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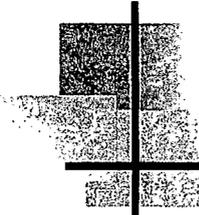
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# Benchmarking

---

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# Benchmarking Practices

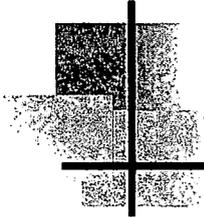
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- Using the survey data, we have identified most common practices
- For many activities, we will propose “benchmark” practices
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  - More detailed, or
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# Benchmarking Example: Ballot Accounting

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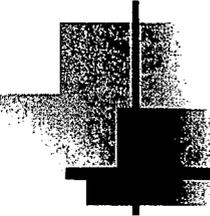
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# Benchmarking Limitations

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  - Handling of recounts and challenges



# Best Practices in Election Law

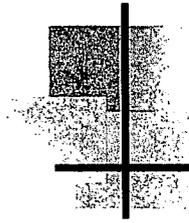
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# What are Best Practices

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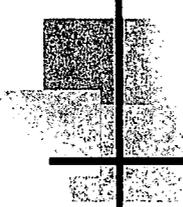
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# Effective Best Practices

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- Address a complete process
- Have been carefully charted
- Often come from organizations with similar characteristics



# Best Practices Examined

---

- What Constitutes a Vote
  - Accounting
  - Auditing
  - Security
  - Transparency
- 
- Issues in Challenges and Recounts

Karen Lynn-Dyson/EAC/GOV  
05/17/2006 05:17 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc Adam Ambrogio/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC  
bcc  
Subject RE: Presentations at the EAC Governing Boards 

I am told that a Wordperfect copy of the Provisional document will be fine.

EAC staff will convert it to a PDF file. Please sent the final drafts of the reports ASAP.

Also, you are correct to note the changes in the time allotments Please divide the time among your staff as you deem appropriate.

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

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/17/2006 04:57 PM

To klynndyson@eac.gov  
cc tokaji.1@osu.edu, john.weingart@rutgers.edu,  
foley.33@osu.edu  
Subject RE: Presentations at the EAC Governing Boards

Karen, I don't have the capacity to produce a PDF copy of the report. (I thought we discussed this last week and you agreed that the word document would suffice.) Someone at Eagleton could surely covert the DOC file to PDF, but since I just read your email now (4:50), we could not provide a PDF copy today. Please let me know if you want me to pursue this tomorrow.

Thanks for the schedule below. But it raises a question. Earlier this week you told me that the Commissioners asked that we limit our presentation to 10 minutes and leave the rest of the time for questions and comments. As I noted in my response, condensing our reports to 10 minutes poses a challenge. Is the 10 minute limit no longer operative?

Tom O'Neill

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

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]  
**Sent:** Wednesday, May 17, 2006 12:30 PM  
**To:** tom\_oneill@verizon.net  
**Cc:** asherrill@eac.gov; aambrogio@eac.gov; jthompsonhodgkins@eac.gov  
**Subject:** Re:Presentations at the EAC Governing Boards

028976

Tom-

Look forward to getting a PDF copy of the final versions of the Voter ID paper and the Provisional Voting Paper by COB today

Here is the timing breakdown for next week's presentations:

**EAC Standards Board ( 137 members)**

**Tuesday, May 23, 2006**

**2:30-4:00 PM**

**Hamilton Ballroom**

Provisional Voting

45 minutes for presentation

45 minutes for questions and answers

**Wednesday, May 24, 2006**

**1:40-2:45 PM**

**Hamilton Ballroom**

Voter Identification

40 minutes for presentation

25 minutes for questions and answers

**EAC Board of Advisors ( 36 members)**

**Wednesday, May 24, 2006**

**8:30-9:15 AM**

**Lafayette Park Ballroom**

Provisional Voting

20 minutes for presentation

25 minutes questions and answers

**Wednesday, May 24, 2006**

**11:00-11:55 PM**

**Lafayette Ballroom**

Voter Identification

30 minutes presentation

25 minutes questions and answers

**EAC General Counsel Julie Thompson - Hodgkins will facilitate /moderate all of your sessions**

Will be in touch tomorrow after the Commissioners have met.

0288

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

028978

Karen Lynn-Dyson/EAC/GOV

05/17/2006 05:32 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC

cc

bcc

Subject Fw: PV Final Draft for Review by Advisory and Standards Boards

Here is the report to be included

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 05/17/2006 05:31 PM —



"Tom O'Neill"  
<tom\_oneill@verizon.net>

05/12/2006 04:51 PM

To klynndyson@eac.gov

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

Subject PV Final Draft for Review by Advisory and Standards Boards

Karen,

Attached is the Final Draft of our report on Provisional Voting for review by the Advisory Board and the Standards Board. I understand from our conversation earlier today that it will be reviewed by the Commissioners at their meeting next week, and, if approved by them, distributed to the boards in advance of their meetings on May 23 and 24. This report will form the basis of our PowerPoint briefing for the boards at those meetings. I will not have hard copies of those PowerPoint presentations for distribution to the boards until the day of the meeting.

We intend to have the Final Draft Voter ID Report to you in time for review by the Commissioners at their second meeting next week.

Thanks for your guidance.

Tom O'Neill



PVFINALDRAFT0512.doc

028978

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

May 12, 2006

Submitted by

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

The Moritz College of Law, The Ohio State University

**FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

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

**Best Practices to Improve Provisional Voting**

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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors  
**The Research Team**

This research report on Provisional Voting in the 2004 election is part of a broader analysis that also includes a study of Voter Identification Requirements, a report on which is forthcoming. Conducting the work was a consortium of The Eagleton Institute of Politics of Rutgers, The State University of New Jersey, and The Moritz College of Law of The Ohio State University.

**The Eagleton Institute** explores state and national politics through research, education, and public service, linking the study of politics with its day-to-day practice. It focuses attention on how contemporary political systems work, how they change, and how they might work better. Eagleton regularly undertakes projects to enhance political understanding and involvement, often in collaboration with government agencies, the media, non-profit groups, and other academic institutions.

**The Moritz College of Law** has served the citizens of Ohio and the nation since its establishment in 1891. It has played a leading role in the legal profession through countless contributions made by graduates and faculty. Its contributions to election law have become well known through its Election Law @ Moritz website. *Election Law @ Moritz* illuminates public understanding of election law and its role in our nation's democracy.

## **Project Management Team**

Dr. Ruth B. Mandel  
Director, Eagleton Institute of Politics  
Board of Governors Professor of Politics  
Principal Investigator  
Chair of the Project Management Team

Edward B. Foley  
Robert M. Duncan/Jones Day Designated  
Professor of Law  
The Moritz College of Law  
Director of Election Law @ Moritz

Ingrid Reed  
Director of the New Jersey Project  
The Eagleton Institute of Politics

Daniel P. Tokaj  
Assistant Professor of Law  
The Moritz College of Law

John Weingart  
Associate Director  
The Eagleton Institute of Politics

Thomas M. O'Neill  
Consultant, The Eagleton Institute of Politics  
Project Director

Dave Andersen  
Graduate Assistant

John Harris  
Graduate Assistant  
The Eagleton Institute of Politics

Donald Linky  
Senior Policy Fellow  
The Eagleton Institute of Politics

April Rapp  
Project Coordinator  
Center for Public Interest Polling  
The Eagleton Institute of Politics

Sara A. Sampson  
Reference Librarian,  
Moritz College of Law

Tim Vercellotti  
Assistant Research Professor  
Assistant Director, Center for Public Interest  
Polling  
The Eagleton Institute

Laura Williams  
The Moritz College of Law

## **FINAL DRAFT**

For Review by the Standards Board and Board of Advisors

### **Peer Review Group**

R. Michael Alvarez  
Professor of Political Science  
California Institute of Technology

Timothy G. O'Rourke  
Dean, Fulton School of Liberal Arts  
Salisbury University

John C. Harrison  
Massee Professor of Law  
University of Virginia School of Law

Bradley Smith  
Professor of Law  
Capital University Law School

Martha E. Kropf  
Assistant Professor Political Science  
University of Missouri-Kansas City

Tim Storey  
Program Principal  
National Conference of State Legislatures

Daniel H. Lowenstein  
Professor of Law, School of Law  
University of California at Los Angeles

Peter G. Verniero  
former Attorney General, State of New Jersey  
Counsel, Sills, Cummis, Epstein and Gross, PC

The Peer Review Group improved the quality of our work by critiquing drafts of our analysis, conclusions and recommendations. While the Group as a whole and the comments of its members individually contributed generously to the research effort, any errors of fact or weaknesses in inference are the responsibility of the Eagleton-Moritz research team. The members of the Peer Review Group do not necessarily share the views reflected in the policy recommendations of the report.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## EXECUTIVE SUMMARY

### Background and Methodology

This report to the United States Election Assistance Commission (EAC) presents recommendations for best practices to improve the process of provisional voting. It is based on research conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at Ohio State University under contract to the EAC, dated May 24, 2005.

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.<sup>1</sup> The process HAVA outlined left considerable room for variation among the states, arguably including such critical questions as who qualifies as a registered voter eligible to cast a provisional ballot that will be counted and in what jurisdiction (precinct or larger unit) the ballot must be cast in order to be counted.<sup>2</sup>

The general requirement for provisional voting is that, if a registered voter appears at a polling place to vote in an election for Federal office, but either the potential voter's name does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, that potential voter must be permitted to cast a provisional ballot. In some states, those who should receive a provisional ballot include, in the words of the EAC's Election Day Survey, "first-time voters who registered by mail without identification and cannot provide identification, as required under HAVA. . ." <sup>3</sup> HAVA also provides that those who vote pursuant to a court order keeping the polls open after the established closing hour shall vote by provisional ballot. Election administrators are required by HAVA to notify individuals of their opportunity to cast a provisional ballot.

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<sup>1</sup>The Election Center's National Task Force Report on Election Reform in July 2001 had described provisional ballots as providing "voters whose registration status cannot be determined at the polls or verified at the election office the opportunity to vote. The validity of these ballots is determined later, thus ensuring that no eligible voter is turned away and those truly ineligible will not have their ballots counted." It recommended "in the absence of election day registration or other solutions to address registration questions, provisional ballots must be adopted by all jurisdictions." See [www.electioncenter.org](http://www.electioncenter.org).

<sup>2</sup> The 2004 election saw at least a dozen suits filed on the issue of whether votes cast in the wrong precinct but the correct county should be counted. One federal circuit court decided the issue in *Sandusky County Democratic Party v. Blackwell*, 387 F.3d565 (6<sup>th</sup> Cir. 2004), which held that votes cast outside the correct precinct did not have to be counted. The court relied on the presumption that Congress must be clear in order to alter the state-federal balance; thus Congress, the court concluded would have been clearer had it intended to eliminate state control over polling location (387 F.3d at 578). An alternative argument, that HAVA's definition of "jurisdiction" incorporates the broader definition in the National Voting Rights Act, however, has not been settled by a higher court. But for now states do seem to have discretion in how they define "jurisdiction" for the purpose of counting a provisional ballot.

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

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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Our research began in late May 2005. It focused on six key questions raised by the EAC.

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, we:

1. Surveyed 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. Reviewed the EAC's Election Day Survey, news and other published reports in all 50 states to understand the local background of provisional voting and develop leads for detailed analysis.<sup>4</sup>
3. Analyzed statistically provisional voting data from the 2004 election 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. Collected and reviewed the provisional voting statutes and regulations in all 50 states.
5. Analyzed litigation affecting provisional voting or growing out of disputes over provisional voting in all states.

Our research is intended to 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 move forward to assess and adopt the recommendations made here, provisional voting merits continuing observation and research. The situation is fluid. As states, particularly those 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.

## KEY FINDINGS

### Variation among the states

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million, or just over 63%, were counted. Provisional ballots accounted for a little more than 1% of the final vote tally. These totals obscure the wide variation in provisional voting among the states.<sup>5</sup>

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<sup>4</sup> Attachment 1 provides detailed information on how this study classifies the states according to the characteristics of their provisional voting procedures. It also describes how the data used in the statistical analysis may differ from the data in the Election Day Survey, which became available as our research was concluding.

<sup>5</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

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For Review by the Standards Board and Board of Advisors

- Six states accounted for two-thirds of all the provisional ballots cast.<sup>6</sup>
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.
- States with voter registration databases counted, on average, 20% of the provisional ballots cast.
- States without databases counted ballots at more than twice that rate: 44%.<sup>7</sup>
- States that provided more time to evaluate provisional ballots counted a greater proportion of those ballots. Those that provided less than one week counted an average of 35.4% of their ballots, while states that permitted more than 2 weeks, counted 60.8%.

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

## Variation within states

Within states, too, there was little consistency among different jurisdictions. 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 (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

- In Ohio some counties counted provisional ballots not cast in the assigned precinct even though the state's policy was to count only those ballots cast in the correct precinct.
- Some counties in Washington tracked down voters who would otherwise have had their provisional ballots rejected because they had failed to complete part of their registration form, gave them the chance to correct those omissions, and then counted the provisional ballot.

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

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.

---

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

<sup>7</sup> As the Carter-Baker Commission report put it, "provisional ballots were needed half as often in states with unified databases as in states without." Report on the Commission on Federal Election Reform, "Building Confidence in U. S. Elections," September 2005, p. 16.

<sup>8</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.28986.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

- 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.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be 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.

## **The lessons of litigation**

Successful legal challenges 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. 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. This litigation was significant nonetheless.

- First, the Sixth Circuit decision established the precedent that voters have the right to sue in federal court to remedy violations of HAVA.
- Second –and significantly-- the litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted. The decision also defined an ancillary right –the right to be directed to the correct precinct. There voters could cast a regular ballot that would be counted. If they insisted on casting a provisional ballot in the wrong precinct, they would be on notice that it would be a symbolic gesture only.
- Third, these lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## **States move to improve their processes**

Shortly after the 2004 election, several states came to the conclusion that the administration of their provisional voting procedures needed to be improved, and they amended their statutes. The new legislation highlights areas of particular concern to states about their provisional voting process.

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.
- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

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 that draw on the experience gained in the 2004 election can be useful in states’ efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

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# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

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

### Take a quality-improvement approach

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

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

### Emphasize the importance of clarity

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

- 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?
- Do the procedural requirements of the system permit cost-efficient operation?
- 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?

### Court decisions suggest areas for action

The court decisions following the 2004 election also suggest procedures for states to incorporate into their procedures for provisional voting. EAC should recommend to the states that they:

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- 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. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

### Assess each stage of the provisional voting process

028988

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

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

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

- The layout and staffing of the multi-precinct polling place is important. States should ensure that training materials distributed to every jurisdiction make poll workers familiar with the options available to voters.
- The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting and include take-away information for the voter on the steps in the ballot evaluation process.
- 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. Best practice would be for states should provide guidelines (as do Connecticut and Delaware) to estimate the supply of provisional ballots needed at each polling place.

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.

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct 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. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.
- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

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

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## FINAL DRAFT

For Review by the Standards Board and Board of Advisors

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

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

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

### Final observation

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

028990

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## Provisional Voting in 2004

In the 2004 election, nationwide about 1.9 million votes, or 1.6% of turnout, were cast as provisional ballots. More than 1.2 million or just over 63% were counted. Provisional ballots accounted for a little more than 1% of the final vote tally.

These totals obscure the wide variation in provisional voting among the states.<sup>9</sup> Six states accounted for two-thirds of all the provisional ballots cast.<sup>10</sup> State by state, the percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%. The portion of provisional ballots cast that were actually counted also displayed wide variation, ranging from 96% in Alaska to 6% in Delaware. States with voter registration databases counted, on average, 20% of the provisional ballots cast. Those without databases counted provisional ballots at more than twice that rate, 44%.

An important source of variation was a state's previous experience with provisional voting. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>11</sup>

- The percentage of the total vote cast as provisional ballots averaged more than 2% in the 25 experienced states. This was 4 times the rate in states new to provisional voting, which averaged 0.47%.<sup>12</sup>
- The experienced states counted an average of 58% of the provisional ballots cast, nearly double the proportion in the new states, which counted just 33% of cast provisional ballots.
- The combined effect of these two differences was significant. In experienced states 1.53% of the total vote came from counted provisional ballots. In new states, provisional ballots accounted for only 0.23% of the total vote.

Those voting with provisional ballots in experienced states had their ballots counted more frequently than those in the new states. This experience effect is evidence that there is room for improvement in provisional balloting procedures, especially in those states new to the process.<sup>13</sup> That conclusion gains support from the perspectives of the local election officials revealed in the survey conducted as a part of this research. Local (mostly county level) election officials from "experienced" states were more likely to:

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<sup>9</sup> HAVA allows the states considerable latitude in how to implement provisional voting, including deciding who beyond the required categories of voters should receive provisional ballots and how to determine which provisional ballots should be counted.

<sup>10</sup> California, New York, Ohio, Arizona, Washington, and North Carolina. The appearance of Arizona, Washington and North Carolina on this list shows that the number of provisional ballots cast depends on factors other than the size of the population.

<sup>11</sup> See the appendix for our classification of "old" and "new" states and explanation of why the total is less than 50.

<sup>12</sup> To compensate for the wide differences in vote turnout among the 50 states the average figures here are calculated as the mean of the percent cast or counted rather than from the raw numbers of ballots cast or counted.

<sup>13</sup> Managing the provisional voting process can strain the capacity election administrators. For example, Detroit, counted 123 of the 1,350 provisional ballots cast there in 2004. A recent study concluded that Detroit's "6-day time limit to process provisional ballots was very challenging and unrealistic. To overcome this challenge, *the entire department's employees were mobilized to process provisional ballots.*" (emphasis added.) GAO Report-05-997, "Views of Selected Local Officials on Managing Voter Registration and Ensuring Citizens Can Vote," September 2005.

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

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

If experience with provisional voting does turn out to be a key variable in performance, that is good news. As states gain experience with provisional ballots their management of the process could become more consistent and more effective over subsequent elections. Further information from the EAC on best practices and the need for more consistent management of the election process could sharpen the lessons learned by experience. The EAC can facilitate the exchange of experience among the states and can offer all states information on more effective administration of provisional voting.

Concluding optimistically that experience will make all the difference, however, may be unwarranted. Only if the performance of the “new” states was the result of administrative problems stemming from inexperience will improvement be automatic as election officials move along the learning curve. Two other possibilities exist. Our current understanding of how provisional voting worked in 2004 is not sufficient to determine unambiguously which view is correct.

1. “New” states may have a political culture different from “old” states. That is, underlying features of the “new” states political system may be the reason they had not adopted some form of provisional voting before HAVA. The “new” states may strike a different balance among the competing objectives of ballot access, ballot security and practical administration. They may ascribe more responsibility to the individual voter to take such actions as registering early, finding out where the right precinct is, or re-registering after changing address. They may value keeping control at the local level, rather than ceding authority to state or federal directives. The training they offer poll workers about provisional ballots may not be as frequent or effective as in other states. If the inconsistent performance in the “new” states arises out of this kind of political culture, improving effectiveness in the use of the provisional ballots -- as measured by intrastate consistency in administration--- will be harder and take longer to achieve.<sup>14</sup>
2. “Old” states may devote fewer resources to updating their registration files or databases because they consider provisional ballots as a reasonable fail safe way for voters with registration problems a way to cast a ballot. The adoption of statewide voter registration databases in compliance with HAVA therefore may reduce the variation in the use of provisional ballots among the states.

Other influences decreasing consistency among the states include:

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<sup>14</sup> Despite differing political cultures among states and the latitude HAVA provides states, the statute does, indeed impose some degree of uniformity on issues that Congress thought essential. For example, before HAVA, took effect, “no state gave the voter the right to find out the status of their ballot after the election.” Now all offer that opportunity. See Bali and Silver, “The Impact of Politics, Race and Fiscal Strains on State Electoral Reforms after Election 2000,” manuscript, Department of Political Science, Michigan State University. Resisting HAVA’s mandates through foot-dragging lacks any legitimate foundation in law or policy.

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- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit.<sup>15</sup>
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>16</sup> In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted ballots cast only in the proper precinct counted an average of 42% of provisional ballots.<sup>17</sup>

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<sup>15</sup> See Table 2 in Appendix 2 for information on the verification method used in each state.

<sup>16</sup> The Election Day Survey found that states using statewide voter registration databases reported a lower incidence of casting provisional ballots than states without voter registration databases, suggesting that better administration of voter registration rolls might be associated with fewer instances where voters would be required to cast a provisional ballot due to a problem with their voter registration.

<sup>17</sup> The Election Day Survey concluded that : "Jurisdictions with jurisdiction-wide provisional ballot acceptance reported higher rates of provisional ballots cast, 2.09 percent of registration or 4.67 percent of ballots cast in polling places, than those with in-precinct-only acceptance, 0.72 and 1.18 percent, respectively. Predictably, those jurisdictions with more permissive jurisdiction-wide acceptance reported higher rates of counting provisional ballots, 71.50 percent, than other jurisdictions, 52.50 percent."

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- In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
- If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.<sup>18</sup>
- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.<sup>19</sup>
  - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks<sup>20</sup>.
  - Those states that permitted less than one week counted an average of 35.4% of their ballots.
  - States that permitted between one and two weeks counted 47.1%.
  - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast<sup>21</sup>.
  - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

## Variation Within States

Not only was there little consistency among states in the use of provisional ballots, there was also little consistency within states. This was true in both new and old states. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors beyond statewide factors, such as verification requirements or the time provided for ballot evaluation, also influence the provisional voting process. Reacting to the lack of consistency within states, the Carter-Baker Commission recommended that “states, not counties or municipalities, should establish uniform procedures for the verification and counting of provisional ballots, and that procedure should be applied uniformly throughout the state.”<sup>22</sup>

Election Line reported that:

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<sup>18</sup> This estimate is a rough approximation. States that recognize out-of-precinct ballots counted, on average, 56% of the provisional votes cast. Applying that ratio to the 1.9 million provisional ballots cast nationwide would result in 1.1 million provisional ballots that would have been counted if all states accepted out-of-precinct votes. States that did not recognize out-of-precinct ballots counted 42% of the provisional ballots cast, or about 813,000 ballots, for a difference of about 290,000 votes.

<sup>19</sup> See Appendix \_\_, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

<sup>20</sup> Many thanks to Ben Shepler, of the Moritz College of Law, for assembling complete data on the time requirements states permitted for the counting of provisional ballots.

<sup>21</sup> 43 states are included in this analysis, including Washington D.C. The 7 election-day registration states are omitted, as is Mississippi, which never provided data on provisional ballots. North Carolina is also omitted from the regressions, as it does not have a statewide policy on how it verifies provisional ballots.

<sup>22</sup> Recommendation 2.3.2 of the Report of the Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” September 2005, p.16. The report also observed that, “. . .different procedures for counting provisional ballots within and between states led to legal challenges and political protests. Had the margin of victory for the presidential contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated.”

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

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

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

The conclusions to be drawn from these findings are clear. In voting districts with lower education levels, poverty, 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 in such districts. 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.

### **Effectiveness of Provisional Voting**

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require 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. Information needed about the eligibility or registration status of provisional voters is also not available.

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 accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were

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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 allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

Since we do not know 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***

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

***Table 1 Cal Tech – MIT Voting Technology Project Estimates***

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

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. In 2004, about 1.2 million provisional voters were counted. A rough estimate, then, of the effectiveness of provisional voting in 2004, then, might be 40% to 50% (ballots counted/votes lost)<sup>23</sup>. Whatever the precise figure, it seems reasonable to conclude that there is considerable room for improvement in the administration of provisional voting.

## **Legislative Response**

Indeed, several states<sup>24</sup> came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

<sup>23</sup> 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 the CPS 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 they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

<sup>24</sup> Twelve states made statutory or regulatory changes: Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Montana, New Mexico, North Carolina, Virginia and Wyoming. See Table 4 in Appendix 2.

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Not enough time to examine and count the provisional ballots. Florida, Indiana, Virginia, and Washington all have clarified or extended the timeline to evaluate the ballots. But taking more time can prove a problem, particularly in presidential elections with the looming deadline to certify the vote for the Electoral College.<sup>25</sup>

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.

## 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.

This litigation was significant nonetheless.

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

There was also pre-election litigation over the question whether voters who had requested an absentee ballot were entitled to cast a provisional ballot. In both cases (one in Colorado and one, decided on Election Day, in Ohio), the federal courts ruled that HAVA requires that these voters receive a provisional ballot. Afterwards, it is for state officials under state law to

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<sup>25</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots “very challenging and unrealistic. To overcome this challenge, the *entire department’s employees were mobilized to process provisional ballots.*” The report also found that in Los Angeles County, “staff had to prepare duplicate ballots to remove ineligible or invalid contests when voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots.” In a close, contested election, “duplicate” ballots would doubtless receive long and careful scrutiny.” See Appendix 7, GAO, “Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,” September 2005. (GAO Report-05-997)

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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.

## RECOMMENDATIONS

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

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

### 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.

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

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

1. Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate? Does the tally include all votes cast by properly registered voters who correctly completed the steps required?
2. Is the provisional voting system sufficiently robust to perform well under the pressure of a close election when ballot evaluation will be under scrutiny and litigation looms?
3. Do the procedural requirements of the system permit cost-efficient operation? Are the administrative demands of the system reasonably related to the staff and other resource requirements available?

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4. How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

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

## Best Practices For Each Step In The Process

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

### The Importance of Clarity

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

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant recanvassing.<sup>27</sup> Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide poll workers standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.<sup>28</sup>

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

<sup>27</sup> See *Washington State Republican Party v. King County Division of Records*, 103 P3d 725, 727-728 (Wash. 2004)

<sup>28</sup> See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the

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- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.<sup>29</sup> Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll workers may need appropriate training to understand their duty to give such voters a provisional ballot.<sup>30</sup>

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

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

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

## B. At the Polling Place

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wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

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

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

<sup>32</sup> The Century Foundation, op. cit.

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>33</sup> Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>34</sup> A state statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.
2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>35</sup> At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>36</sup> States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

<sup>33</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>34</sup> 2005 N.M. Laws 270 page no. 4-5.

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

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

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## C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

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 and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.<sup>39</sup>
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.<sup>40</sup> 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

<sup>37</sup> The Century Foundation, *op. cit.*

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

<sup>39</sup> In Kansas, the voter can provide ID to a County Election Officer any time before the County Board of Canvassers meets to count provisional ballots. KS. ST. 25-1122(d). ID can be presented in person, OR via mail or electronic means. *Id.* The Board must meet either on the Friday or Monday following a Tuesday election. *Id.* at 25-3104.

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

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

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For Review by the Standards Board and Board of Advisors

additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.

3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.<sup>41</sup> Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.
4. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.<sup>42</sup>

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

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

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

<sup>42</sup> 8 CCR 1505-1, at 26.5.4, adopted August 4, 2005. See also 1-2-509(3) C.R.S.

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registered by mail or through a voter registration drive, is tagged as id deficient, and did not provide id at the time of voting.

RRD (Rejection registration deficient) Voter had deficient or incomplete registration and required information was not provided prior to or at the time of filling in the provisional ballot envelope. Voter's eligibility cannot be established.

### **D. Verification of Provisional Ballots**

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time 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 prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

### **E. Post-election Information for Voters**

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

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

### **F. State Laws Governing Litigation over Provisional Voting**

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

### **Broader Considerations**

#### **G. Integrity and the Appearance of Integrity**

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.

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2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma<sup>43</sup> or the Baldrige Quality process<sup>44</sup> to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

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

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

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

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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.

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## ATTACHMENT 1 – Data Sources for Classification of the States

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

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

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

--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 included it in our analysis.

### New vs. Old States

We classified states as "new" or "old" based on the 2001 Electionline study of provisional voting,<sup>45</sup> but condensed its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

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

We included in the list of "Old States" all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. 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

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<sup>45</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

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were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

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

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

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## Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>46</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

## Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as "out-of-precinct." States that invalidated such ballots were categorized as "In-precinct only."

<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois <sup>47</sup>	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
<b>17</b>	<b>26</b>	<b>7</b>

<sup>46</sup> "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

<sup>47</sup> In Illinois, it is not clear that all counties followed this procedure. Some counties may not have counted out-of-precinct ballots.

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## 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.

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

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

029009

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## 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.

<b>Table 4</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>48</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>49</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>50</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>48</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>49</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>50</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

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## Data Differences

The data used in this study differ from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

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

<sup>51</sup> Data not provided by the state itself is taken from Electionline figures.

029011

Karen Lynn-Dyson/EAC/GOV  
05/18/2006 12:43 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu,  
dlinky@rci.rutgers.edu, foley.33@osu.edu,  
ireed@rutgers.edu, "Johanna Dobrich"  
bcc Adam Ambrogii/EAC/GOV  
Subject Re: Voter ID Report and Appendices 

Tom-

As was just discussed, the EAC's Commissioners have elected to delay a presentation of Eagleton's report on Voter Identification to the EAC Board of Advisors and Standards Board, at this time.

The Commissioners will spend time over the next several weeks reviewing and considering this report in great detail and will make a determination, shortly thereafter, regarding how they wish to proceed with the issuance of an EAC report on this study.

Many thanks to you and your staff for the work that has been done. We look forward to next week's presentation of the Eagleton/Moritz study of provisional voting.

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

"Tom O'Neill" <tom\_oneill@verizon.net>



"Tom O'Neill"  
<tom\_oneill@verizon.net>  
05/17/2006 09:25 AM

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

Karen,

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

Thanks for your forbearance.

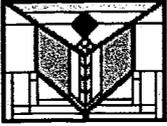
Tom O'Neill

029012



Appendices517.doc VoterIDReport05170910.doc

029013



Adam Ambrogi /EAC/GOV  
05/19/2006 12:45 PM

To Hvonspakovsky@fec.gov  
cc  
bcc  
Subject EAC Standards Board

Commissioner:

Hope all is going well in your new position-- I wanted to get to you the agenda for the Standards Board meetings next week. The Board of Advisors is occurring concurrently, so you can feel free to wander, or to stay at one of the meetings-- the same information will be presented in each meeting.

Let me know if you have any questions.

Best regards,  
Adam



2006 Standards Board agenda.doc

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Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

029014



HvonSpakovsky@fec.gov  
05/19/2006 02:34 PM

To aambrogi@eac.gov  
cc  
bcc  
Subject Re: EAC Standards Board

Adam,

thanks for sending this; I am going to try to stop by. How are you doing on finding another post? Did you ever talk to Commissioner Walther at the FEC?

Hans

aambrogi@eac.gov

05/19/2006 12:45 PM

To Hvonspakovsky@fec.gov  
cc  
Subject EAC Standards Board

Commissioner:

Hope all is going well in your new position-- I wanted to get to you the agenda for the Standards Board meetings next week. The Board of Advisors is occurring concurrently, so you can feel free to wander, or to stay at one of the meetings-- the same information will be presented in each meeting.

Let me know if you have any questions.

Best regards,  
Adam

-----  
Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission

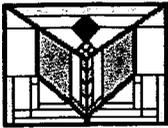
029015

1225 New York Ave. NW - Suite 1100  
Washington, DC 20005



202-566-3105 2006 Standards Board agenda.doc

029016



Adam Ambrogi/EAC/GOV  
05/22/2006 09:05 AM

To "Caldwell, Theresa"  
<Theresa.Caldwell@mail.house.gov>@GSAEXTERNAL  
cc  
bcc  
Subject REMINDER: Congressman Jackson's show, 5/22, 2pm

Theresa:

Questions/Issues: (Sorry they're a little late)

There have been concerns about both machine failure and pollworker training in the recent primary in Chicago-- what is the EAC doing to focus on these concerns, and how do you believe local election officials are meeting the challenge, and what can ordinary citizens do to assist the process.

What can voters do best to protect their right to vote on election day? What should they bring with them and what information should they know?

(There is, of course the voter identification issues that have been debated on the country with conservatives largely concerned about voting fraud, and liberals largely concerned about voter access. Can you comment on this debate?)

I've heard about a new requirement for provisional voting? What does this mean, and if I'm a voter, and told I can't vote, how do I cast a provisional vote?

You recently authored a New York Times opinion piece (along with Fair Vote President John Anderson) recommending that all high school graduates be registered to vote (to be effective on their 18th birthday). What do you think can be done with that recommendation in the states, and why did you come to that opinion.

You were recently in Ohio to observe the federal primary. Do you see different issues in different states, or are the problems based on the technology used or procedures promulgated?

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Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

"Caldwell, Theresa" <Theresa.Caldwell@mail.house.gov>



"Caldwell, Theresa"  
<Theresa.Caldwell@mail.house.gov>  
05/18/2006 03:02 PM

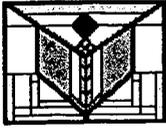
To  
cc  
Subject REMINDER: Congressman Jackson's show, 5/22, 2pm

Hello there! I won't be in the office tomorrow, so I thought I would send you a note just to make sure everything is still all set for Monday's taping of "Perfect Union."

029017

*Theresa Caldwell*  
*Deputy Communications Director*  
*Office of Congressman Jesse L. Jackson, Jr.*  
*202-225-0773*

029018



Adam Ambrogi/EAC/GOV  
06/12/2006 10:05 AM

To wang@tcf.org  
cc  
bcc  
Subject FYI

I don't know if you had heard about this but in NCSL's annual conference, they're having a piece on Voter ID and fraud issues. I don't know who's on that panel, but I thought I would let you know, since so much of that work is being done through the state legislatures. Hope all is well, and thanks for the updates....

<http://www.ncsl.org/annualmeeting/agenda/showmain3.cfm?requesttimeout=90>

## Tuesday, August 15, 2006

**10:15 am - 5:15 pm Redistricting & Elections Committee**

### ***Supremes Rule on Re-Redistricting of Texas***

10:15 am - 11:30 am

Three years after the highly publicized redrawing of Texas congressional districts, the U.S. Supreme Court ruled in June on whether the Legislature acted unconstitutionally. How will the decision alter the redistricting process? What subtle, but critical, lines were buried in the text of the opinions?

### ***Legislative Competition and the role of Gerrymandering?***

11:30 am - 12:45 pm

Are legislative elections really less competitive today than in the past? Is gerrymandering the culprit or one of many reasons. New research helps put the redistricting factor in perspective.

### ***Are Voters Who they Say they Are?***

1:00 pm - 2:00 pm

Many states continue to look at the issue of voter ID and struggle with balancing the need for maximum access to the polls with trying to eliminate any possible fraud. How big is this problem and what are states doing about it?

### ***Will Fall Elections Run like Clockwork?***

2:00 pm - 3:00 pm

Since the controversial 2000 election debacle, most states have implemented key election reforms to shore up the system and respond to federal legislation. Will this fall's 2006 election go off without a hitch or will new problems emerge in the voting process?

### ***What's Next in Redistricting Technology***

3:15 pm - 4:15 pm

Redistricting software vendors will preview and demonstrate what they are planning for 2010. They will be discuss things like the next generation of redistricting technology with support for desktop, Web based and PDA/Cellular applications.

### ***Countdown to Census 2010***

4:15 pm - 5:15 pm

Speakers: Linda Franz, Geographer, U.S. Census Bureau, Washington, D.C.  
Bob LaMacchia, Chief, Geography Division, U.S. Census Bureau, Washington, D.C.  
Cathy McCully, Chief, Census Redistricting Data Office, U.S. Census Bureau, Washington,

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D.C.

## **Wednesday, August 16, 2006**

**10:15 am - 11:30 am Redistricting & Elections Committee**

### ***Are 527s Here to Stay?***

In many states, the so-called 527 groups are likely to play a major part in this fall's campaigns. What are they? Should they be regulated? Can they be regulated? What are states doing in this area?

### **2:45 pm - 4:15 pm Money and Politics**

As ethical scandals over campaign contributions and influence-buying swirl around Washington, D.C., states once again take the lead in finding new solutions to an old problem. This session will highlight states' innovative ideas for regulating money in politics and the role of lobbyists in fundraising and campaigns.

## **Friday, August 18, 2006**

**8:30 am - 10:00 am General Session and Breakfast**

### ***SPEAKERS :***

Peter Hart has been one of the country's leading public opinion analysts for more than 27 years. He conducts all public opinion polling for NBC News and The Wall Street Journal. His focus is public policy, cultural and social issues, and strategic consulting for corporations, including Time Warner, Microsoft, Kodak to name a few.

Frank Luntz is one of the most honored communications professionals in America today. Named one of the four Top Research Minds by Business Week magazine, he pioneered the Instant Response focus group research technique, and won an Emmy Award in 2001 for his 100 Days, 1000 Voices segments on NBC's primary and election night coverage.

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Adam D. Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005  
202-566-3105

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