

presidential campaign, Hearne was dispatched to Florida as a Republican observer in Broward County's manual recount, and in 2004 he worked as the national general counsel for Bush/Cheney '04 Inc.

In his testimony, Hearne described ACVR as "committed to defending the rights of voters and working to increase public confidence in the fairness of the outcome of elections." And he submitted to the committee a copy of the ACVR's "Ohio Election Report," of which he was the lead author. That report read in part:

This [Democratic] voter registration effort was not limited to registration of legal voters but, criminal investigations and news reports suggest, that this voter registration effort also involved the registration of thousands of fictional voters such as the now infamous Jive F. Turkey, Sr., Dick Tracy and Mary Poppins. Those individuals registering these fictional voters were reportedly paid not just money to do but were, in at least one instance, paid in crack cocaine.

And in testimony on Dec. 7, 2006, the same day the prosecutors were fired, Hearne told the Election Assistance Commission: "Recent press reports suggest that voter registration fraud remains a significant issue in the recent mid-term elections."

The press contact for ACVR is Jim Dyke, who was the communications director of the Republican National Committee during the 2004 election. In the fall of 2005 he was working in the White House trying to get Harriet Miers on the Supreme Court, before moving on to work in Vice President Dick Cheney's office. Brad Friedman of BradBlog.com reported that according to internet records, Dyke registered the ACVR Internet domain name, ac4vr.com, in December 2004. Those records have since disappeared from public view. (The source of ACVR's funding is also mysterious. According to the *Pittsburgh Tribune-Review*, "When asked to name any contributors to his nonprofit, Hearne claimed he did not know but said Lunde did. When Lunde was asked, he claimed he did not know but said Hearne did.")

Dyke is a good friend of his fellow Arkansan Tim Griffin, the new U.S. attorney in Arkansas. In 2004, both worked at the Republican National Committee helping Bush get re-elected. Dyke has been a vocal defender of Griffin's appointment as U.S. Attorney. "He has a real passion for the law," Dyke told the *Arkansas Democrat-Gazette*.

Rounding out the GOP operatives is Pat Rogers, who sits on the board of ACVR. An attorney for the Republican Party in New Mexico, he has been a vocal critic of fired U.S. Attorney Iglesias. According to the *Albuquerque Tribune*, Rogers is on the short list to replace Iglesias.

Rove's role

Minnite, who did the study on voter fraud, has read through the reports prepared by ACVR and presented by Hearne at various official hearings. She noticed that the claims follow a predictable script. "It all starts to look the same," she says. "There is a pattern in the way the documents that claim to show voter fraud are put together. It is usually a compilation of news reports on allegations. There is no follow up, no research done, no analysis."

"As I delved into it, I was faced with the question: 'Why do people think there is a lot of fraud when there isn't any real evidence?' I think people are being manipulated by politics, which takes the form of these reports that are dumped on the public. It is as if you get a big enough pile maybe you will convince people that the volume of fraud is quite large and that we have a serious problem."

Wisconsin provides a case in point. At a March 13 press conference, White House Counsel Dan Bartlett identified Wisconsin as one of the states from which the White House had "received complaints about U.S. attorneys."

In 2005, U.S. Attorney Steve Biskup, who was appointed by Bush, investigated these allegations of voter fraud and reported that he found no evidence on which to press charges.

It turns out that early in 2005, Republican officials in Wisconsin prepared a report titled "Fraud in Wisconsin 2004: A Timeline/Summary." The document, which was found in White House and Justice Department records released by the House Judiciary Committee, was written by Chris Lato, the former

communications director for the state Republican Party, on orders from Rick Wiley, the party's executive director. The 30-page report, which covers Aug. 31, 2004 to April 1, 2005, contains 65 entries detailing voter fraud. The final example is titled: "RPW [Republican Party of Wisconsin] News Release: Evidence of Election Fraud Piles Up."

The information contained in this Wisconsin compilation, made its way into a 78-page report released on July 21, 2005, by ACVR: "Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election." In the introduction, the ACVR's Hearne and Lunde wrote that the report "documents hundreds of incidents and allegations from around the country. ... [T]housands of Americans were disenfranchised by illegal votes cast on Election Day 2004 ... [P]aid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts. ... [R]equiring government-issued photo ID at the polls ... will help assure ... that no American is disenfranchised by illegal votes."

And who was behind this trail of misinformation? On April 7, Daniel Bice, a columnist for the *Milwaukee Journal Sentinel*, reported that a source familiar with the document told him, "The report was prepared for Karl Rove. Rick [Wiley] wanted it so he could give it to Karl Rove."

On April 6, 2006, in Washington, at the aforementioned speech to Republican Party attorneys, Rove began with a joke: "I ran into [ACVR's] Thor Hearne as I was coming in. He was leaving; he was smart, and he was leaving to go out and enjoy the day." Rove then told the assembled party lawyers, "We have, as you know, an enormous and growing problem with elections in certain parts of America today."

Rove should know. He helped grow the problem.

A Selective View of Fraud

**By: Joe Conason
New York Observer**

Even as Alberto Gonzales rehearses his excuses for the strange dismissal of eight United States Attorneys, which he will perform in public at a Senate hearing this week, he is looking like a marginal player in this scandal. The Attorney General fumbled his role, but in keeping with his Presidential nickname (Fredo), he probably never understood the broader scheme originating in the Bush White House.

Developed by deputy chief of staff Karl Rove, the President's top political aide, that scheme was evidently designed to advance his objective of discouraging minority voters and others with the bad habit of supporting Democratic candidates. In Republican parlance, such attempts to hamper registration, intimidate citizens and reduce turnout in targeted communities are lauded as "combating voter fraud." Several of the fired U.S. Attorneys had angered party operatives, including Mr. Rove, because they had shown so little enthusiasm for trumping up fraud cases against Democrats.

Following the 2004 election, David Iglesias, then serving as the U.S. Attorney in New Mexico, set up a task force to investigate Republican allegations of fraud. Those accusations boiled down to a single case where a woman had created a handful of phony registrations. (She did so for financial reasons, rather than out of any desire to manipulate the election.) When Mr. Iglesias declined prosecution for lack of airtight evidence, local Republicans began to demand his replacement with a more pliable and less professional prosecutor—a demand eventually fulfilled by Mr. Rove and President Bush.

In Wisconsin, by contrast, U.S. Attorney Steven Biskupic prosecuted voter-fraud allegations regardless of merit, winning big headlines when he indicted 14 black Milwaukee residents for casting ballots illegally. Nine of those cases were either tossed out or lost in court—an awful result compared with the normal conviction rate of over 90 percent. But at least the mediocre Mr. Biskupic—whose conviction of a Democratic state official was just overturned on appeal—managed to remain in the good graces of the White House and keep his job.

The Republican cry of "voter fraud" is a specious complaint, amplified by right-wing hacks to conceal the

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fact that in recent years, the most sustained efforts to interfere with orderly elections and voting rights can be traced to the Republican National Committee.

Harassing minority voters with bogus claims of fraud is a venerable tradition in the G.O.P., as anyone familiar with the career of the late Supreme Court Chief Justice William Rehnquist would know. Back in the early 60's, when Rehnquist was just another ambitious young lawyer in Arizona, he ran a partisan campaign to confront black and Hispanic voters over their "qualifications." Along with many of today's generation of Republican leaders, he was a stalwart of the Goldwater campaign in 1964, which garnered its handful of electoral votes in the South by opposing the Voting Rights Act.

Then came Richard Nixon's Southern strategy of nurturing racist grievances to build Republican majorities—around the time that a young operative named Karl Rove was rising in the party. Under his leadership, the G.O.P. has repeatedly been disgraced by conspiracies to diminish voter participation.

In 2002, Republican operatives used a telemarketing firm to illegally jam Democratic phone banks in New Hampshire to win the U.S. Senate seat now held by John Sununu. In 2004, Florida state officials sent armed officers into certain Orlando neighborhoods to scare elderly black registrants, while Republicans sought to challenge minority voters en masse in communities in Kentucky, Nevada, South Carolina, Pennsylvania and Ohio, and paid for the destruction of Democratic voter registrations in Nevada and Oregon.

Actual voter fraud of the kind decried in Republican propaganda is rare, according to nonpartisan experts. Although the White House recently rewrote a careful federal study by the Election Assistance Commission to hide that basic fact, it remains true that very few individuals intentionally seek to fabricate a registration or cast an illegal ballot. There are exceptions, of course—most notably illustrated by Republican celebrity Ann Coulter.

When the far-right columnist and television personality registered to vote in Palm Beach, Fla., in 2005, she wrote down the address of her realtor's office rather than her own home address. She then signed the form, despite its plain warning that falsifying any information on it would make her liable to felony prosecution—and which she, as a lawyer, surely understood. According to Palm Beach County election officials, she also voted in the wrong precinct the following year, disregarding a poll worker who explained her error. (Coulter fans can view her dubious voter-registration form online at www.bradblog.com.)

If proved, those acts would be crimes punishable by prison terms of up to five years, but Ms. Coulter has stonewalled the ongoing investigation. (She says the Palm Beach officials are syphilitic and mentally defective.) No charges have been filed so far, perhaps because her lawyer is a prominent Republican who worked on *Bush v. Gore* in 2000—and whom the President then appointed as U.S. Attorney for the Southern District of Florida. He must know a lot about voter fraud.

Voter ID laws need measured implementation

Timothy J. Ryan, AEI-Brookings, 4/17/2007

The controversy over laws that require citizens to present identification in order to vote returned to national attention last week with a prominent report cataloging steps that the Election Assistance Commission took to lessen the splash of a study examining voter fraud in the United States. Where the original study concluded that there is "widespread but not unanimous agreement that there is little polling place fraud," the version revised by the EAC finds that "there is a great deal of debate" about the prevalence of voter fraud and made other adjustments to temper the findings.

Voter ID laws tend to invite rancor because partisans on both sides of the aisle believe any changes could affect the outcome of various elections. Republicans generally express concern that lax requirements open the door for elections to be stolen by duplicate voters and the like, while Democrats point to a lack of evidence about the extent of fraud and fear that identification requirements dissuade a large number of poor and minority voters—traditionally Democratic constituencies—from voting. Many people in these demographics, the argument goes, do not have drivers' licenses or comparable

identification and can experience difficulty in acquiring them. Further, even the identifications that some states provide for free require documentation—birth certificates or the like—that themselves can require high fees. In this way, ID requirements are compared to modern poll taxes.

A balanced take on the situation is made more difficult by a terrible paucity of convincing evidence regarding both the extent of fraud and the degree to which ID requirements depress turnout. Timothy Vercellotti and David Anderson have released one study suggesting a small negative influence on turnout, but they will be the first to admit that good evidence is hard to come by and that their conclusions are hardly definitive. Similarly, Tova Wang, Spencer Overton, and others point to the fact that relatively few examples of voter fraud have been reported, but skeptics can always respond with the valid concern that fraud, being a criminal activity, is undetectable whenever it is successful. We only know about fraud when it is caught; who knows how much fraud escapes our attention? And even if fraud is uncommon today, could it not become a problem tomorrow?

Aside from the difficulty of balancing integrity and accessibility, proponents of voter ID laws argue that identification requirements will help to restore the flagging confidence in election administration (see Indiana Secretary of State Todd Rokita's Q&A here) and that the standards are needed to bring U.S. practices on par with the rest of the world; most advanced democracies require identification of some kind (though the onus of providing the ID oftentimes lies on the government).

Perhaps there are a few items within the debate upon which both sides of the aisle can agree. First, voter ID laws would not prevent all kinds of fraud or even the most consequential. Requiring an ID might prevent impersonation of other individuals at the polling places, but it would not, for example, prevent the stuffing of ballot boxes, either in the old, literal sense or the modern electronic equivalent: the subversion of machine software through hacking.

Second, it is difficult to perpetrate fraud—at least the kind of fraud that IDs are designed to prevent—in the volume that would be necessary to swing an election. Impersonating a voter would require either falsifying registration forms to place fictional voters on the rolls or stealing the persona of someone who had already registered. In the first case, an election thief would typically have to contrive fake addresses, a kind of fraud that could well be discovered if perpetrated on a large scale. Similarly, stealing the identity of a real person would require an assurance that the victim had not already voted. Otherwise, a fraudulent voter could be caught red-handed.

Furthermore, in-person fraud would require the perpetrators to travel to enough polling stations on Election Day so as to cast a significant number of fraudulent votes. How many polling places could a single person visit in one day? Fifteen? Perhaps twenty? Such a small number of fraudulent votes is unlikely to change the outcome of an election, and so it seems that any successful scheme would have to employ a group of individuals. Of course, as the number of perpetrators increases, so does the probability of being caught. How many of even the most avid partisans would undertake the formidable risk of jail time in order to marginally increase the likelihood of their favored candidate winning? In many ways, the kind of fraud that an ID requirement would prevent is akin to the counterfeiting of nickels and dimes: high risk for low reward.

Finally, any effort to neutralize voter fraud without a sober consideration of absentee voting would be sorely incomplete. Absentee voting, which routinely constitutes 30 percent or more of the votes cast in some states (such as California), requires no proof of ID and is very much the Achilles heel of election security. Because a single individual could theoretically acquire hundreds of absentee ballots and complete them in private, it is the method most likely to facilitate wholesale voter fraud. If fraud through impersonation is analogous to counterfeiting nickels and dimes, absentee voting could be the equivalent of counterfeiting \$100 bills. It is for this reason that efforts to encourage absentee voting, such as allowing absentee voting without an excuse, should be considered with great caution.

Nevertheless, if the states do want to employ some kind of ID requirement, they should take steps to minimize the possibility that ID laws will prevent legitimate votes from being cast. For instance, Virginia allows ID-less voters to cast a ballot as long as they are registered and sign an affidavit affirming their

identity. It is a practice not altogether satisfactory to hard-liners on either side, but a reasonable middle ground between security and accessibility. Administrators might even consider strengthening this practice by allowing ID-less voters to check a box indicating that they do not own an acceptable identification. If checked, that individual would receive an ID application in the mail. He or she could then submit the application along with a utility bill or other proof of identity in order to receive a free voter identification card. To reinforce the affidavit's status as a short-term fix, voters who habitually show up to Election Day without an ID might eventually lose the privilege of identifying by affidavit.

There remains room for spirited debate about the merits of voter ID laws. One could plausibly favor them for reasons of confidence and facility of recordkeeping while still denying that large-scale fraud exists at all. Still, hastily implemented ID laws could disenfranchise legitimate voters to a far greater degree than they would prevent illegitimate voting. For this reason, lawmakers who genuinely seek to administer elections with an eye towards inclusiveness as well as integrity should consider the imposition of greater requirements with the utmost care.

Timothy J. Ryan can be reached at tryan@aei.org. This piece originally appeared in the AEI-Brookings Election Reform Project Newsletter.

What the Senators Should Ask Gonzalas

By Mark A.R. Kleiman

There are really only two questions the Senate Judiciary Committee needs to ask Alberto Gonzales today:

1. Why are you such a lying turkey?
2. When are you going to resign?

But that would make for an unduly short hearing, so here are a few more questions, just to fill in the time:

1. In your prepared testimony released over the weekend, you assert that you had no advance role in planning for the Pearl Harbor Day massacre. An email sent last year by your assistant, Kyle Sampson, says otherwise. Can you explain the discrepancy?
2. If you were concerned about the performance of the U.S. Attorneys who were fired, why didn't you or anyone from DoJ HQ write them to document those concerns and ask for plans of improvement? Isn't that normal management practice?
3. If you were concerned about the performance of the U.S. Attorneys who were fired, why did the Director of the Executive Office of U.S. Attorneys not know anything about those concerns until the firings happened?
4. Did anyone in the White House, directly or indirectly, ever express concern about Carol Lam's corruption investigations? Who? When? What was said?
5. Do you agree with the theory offered by U.S. Attorney Biskupic than anytime political considerations

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enter into the award of a public contract, that constitutes misappropriation of funds? Has the Public Integrity Section considered or brought such cases against any Bush Administration officials? Why not? And if you don't think that theory is legally sound, why does Mr. Biscupic still have a job?

6. Is it true that Karl Rove and/or Pete Domenici asked you to fire David Iglesias? If so, what were their stated reasons? Is it true that you refused to fire him without a direct order from the president? Did you ever discuss Mr. Iglesias's tenure with the president? Did he instruct you to fire Mr. Iglesias?

7. No doubt you've seen the letter sent by an anonymous group of DoJ career staff, charging that the Honors Program hiring process has been politicized, and that summa cum laude graduates of Harvard and Yale Law Schools chosen by the operating divisions as potential new hires were denied interviews on the orders of the Deputy Attorney General's office because their resumes indicated liberal political leanings or experience working for Democratic legislators. What inquiries have you made into the truth of those allegations? When can you have us a full report, with the names of the candidates redacted?

8. When was it decided that the Civil Rights Division would give preference in hiring to attorneys with no experience in civil rights law? Why? Is it helpful for fewer than half of the new hires to have relevant experience, compared to the historical average of more than three-quarters?

Or is it simply that less experienced attorneys generally aren't as likely as career professionals to resist political interference?

9. During your tenure, the Department has moved away from prosecuting cases of voter intimidation and suppression and toward prosecuting cases of "voter fraud." But you have yet to develop a case where there was any concerted effort to steal a federal election by having ineligible people vote, and in fact a high proportion of the "vote fraud" indictments brought have ended in acquittals. A consultant's report to the Election Assistance Commission found no evidence of any widespread vote fraud, but did find systematic voter suppression and intimidation. Why, in the face of this evidence, do the Department and the White House and the RNC continue to insist that "voter fraud" is a serious problem. If it is, why can't you seem to find any?

10. In your view, does the theory of the unitary executive bar the Justice Department from prosecuting White House officials for contempt of Congress if they refuse to comply with Congressional subpoenas?

11. After Deputy Attorney General Paul McNulty testified before this committee that the U.S. Attorney for Arkansas, Bud Cummins, had been let go for purely political reasons, Brian Roehrkaase of your public affairs staff, who was traveling with you in Argentina, sent an email to your chief of staff, Kyle Sampson, saying that you were unhappy with that testimony. Were you unhappy about it because it was false, or

because it was true? If you thought it was false -- if you thought, that is, that the Deputy Attorney General of the United States had testified falsely before this committee -- why did you not notify the committee, or insist that Mr. McNulty notify the committee, about the error? If you didn't think it was false, what was the basis of your concern? Did you think it inappropriate for the Deputy Attorney General to tell the truth under oath?

12. There are conflicting stories about the role of the junior senator from Minnesota, Mr. Coleman, in the appointment of Rachel Paulose as U.S. Attorney. It would have been normal for the only senator of the President's party from the affected state to be consulted. Did you, or to your knowledge anyone in DoJ or the White House, ever discuss Ms. Paulose's appointment with Senator Coleman? If so, what was his advice?

13. What was your role in inserting the provision allowing the president to appoint replacement U.S. Attorneys without Senate confirmation into the USA PATRIOT Act reauthorization? To your knowledge, who first came up with that proposal? At what point did you first consider using that provision in connection with the Pearl Harbor Day massacre? How did it happen that Mr. Tolman, formerly the Chief Counsel to this committee who (according to the senator from Pennsylvania, Mr. Specter, then the Chairman) oversaw the somewhat surreptitious insertion of that provision into the law, then became United States Attorney for Utah? Why did the Department oppose the repeal of that provision after the Pearl Harbor Day massacre? What communications have you had with the senator from Arizona, Mr. Kyl, about his placing of a hold on that repeal proposal even after DoJ reversed its stated position?

14. Why wasn't Monica Goodling dismissed immediately after she asserted her right against self-incrimination in connection with the Pearl Harbor Day massacre? Would that not be consistent with the Department's pressure on corporations to fire employees who refuse to cooperate in investigations?

Mark Kleiman is Professor of Public Policy and Director of the Drug Policy Analysis Program at UCLA. He blogs for The Reality-Based Community.

A really important homework assignment

*By Joan Brunwasser
Op-Ed News*

A Really Important Homework Assignment
By Joan Brunwasser, Voting Integrity Editor, OpEdNews April 18, 2007

I am better at writing than doing, talking than doing, virtually anything than actually doing. I'm probably not the only one, but it sometimes makes a mockery of my so-called activism.

My heart is in the right place, but I was born in the wrong generation. High-tech is just not me. If I had been around in the early twentieth century, I would have been a hold-out for the horse and buggy, flustered by those whippersnappers flashing by in their horseless wonders. Paper and pencil are my

preferred means of communication, which is why you'll never catch me with a PDA. My sore rear end is a result of my work at OpEdNews, not from surfing the web.

One of the perks of my role as voting integrity editor is that I've been able to connect and establish a rapport with many of the people who have been driving the election integrity movement over the last few years. I do my best to be fair, and I have no particular axe to grind, so people are pretty patient about my technological shortcomings. OpEdNews does its best to include as many of the activists and their work as possible, and we've done a pretty good job at it.

Brad Friedman is one of my cyber-buddies. I have gotten a great education on election integrity from BradBlog.com. His daily exposés are, for me, what I imagine a cup of coffee is for caffeine addicts. I need my fix to feel like I'm on top of things. We have corresponded for quite a while, and even once had a freewheeling phone conversation with the potential of turning into an interview (except for the fact that I don't know how to do interviews and my computer ate the file of the transcript that he sent me). I am grateful to him for teaching me how to insert links so that my articles would look more professional, even though I wasn't a particularly quick study.

I often feel like a cheerleader (finally, sort of fulfilling my aspirations as a junior high schooler). People do great work, and I commend them for it by posting their articles at OpEdNews to give them more exposure. But, in terms of being able to follow exactly what they're saying or actually follow through on their calls to action, there's the rub. And I don't think I'm the only one, either.

I've had an idea for a while about developing a prototype so that people could print it up and have it in front of them when they made calls to their secretaries of state to enlist their support for election reform. It's a project that is on my friend Nancy (of the Election Defense Alliance) Tobi's list, but the truth is that she is so busy with everything else she's doing, she hasn't been able to get to it yet. Nancy believes that our congressional representatives need to hear from their constituents, and that we all need to begin identifying which ones are on our side and which are not. We need to be strategic in order to win. (Stay tuned for your next assignment. Our template for contacting your congressional reps is in the works.)

In the meantime, there I am, full of good intentions. But, have I picked up the phone and called my own Secretary of State, Jesse White? No, I shamefacedly admit, I have not. And if I haven't, I venture to guess that most people haven't either.

Why haven't I? I'm uncomfortable doing it because I don't feel that I really get all the issues yet, which makes me tentative. That's why I thought of this how-to template that would lay out the issues in a very straightforward, easy-to-follow format. That way, I could just clutch it in front of me when I made my phone call.

I wrote Brad about his article on the latest electronic voting machine/EAC scandal - [click here](#) "Exclusive: ES&S Touch-Screen Voting Systems Found Vulnerable to 'Serious' Viral Vote-Flipping Attack; US Election Assistance Commission Refuses to Issue Warning" - which reads in part,

The vulnerability is said to allow for a single malicious user to introduce a virus into the system which "could potentially steal all the votes in that county, without being detected," according to a noted computer scientist and voting system expert who has reviewed the findings.

I commended Brad (and co-author Michael Richardson) on the post. This is what he wrote me when I asked what we can be doing.

[Make] noise, noise, noise. Any way possible. You're media! Call the EAC [Election Assistance Commission] and see if they have any explanation for that article!

When they give you the same old song and dance, report it again! Call a couple of the SoS offices at the affected states and ask them if they know their systems were found to have been vulnerable to viruses from a single person that could flip an entire county's election undetectedly, and ask them why they didn't

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know about it, since the EAC did, and if they think the EAC should have let them know. Etc.

Advance the story, report it. We could use ya, teammate!

So, here's what I did. I went online and got the telephone number of the EAC, (toll-free 866-747-1471) and the name of the director (Jeannie Layson).

Then, I went online again and got the link for the complete roster of all 50 states (<http://www.nass.org/sos/soscontact.html>) with the Secretaries of States and their phone and fax numbers, snail mail and e-mail addresses. In short, more information than you or I will ever need.

Then, I printed up a copy of the original article from April 16th by Michael Richardson and Brad Friedman (<http://www.bradblog.com/?p=4396#more-4396>) as well as an update that lists the 16 states affected by this newly discovered "virus vulnerability" (<http://www.bradblog.com/?p=4416>). So now I'm all set with everything I need.

Unfortunately, it's too late today to call. But, tomorrow, I will take all of my pieces and:

1. Call the EAC and ask them about the article and why they take no responsibility for contacting and warning the states affected by this serious breach. (Keep in mind that this incompetent group is about to be made a permanent fixture on the political landscape if HR 811 is passed.) I will note any comment, or refusal to comment.
2. Then, I will call as many of the 16 secretaries of state as I can to ask what they think about this article, which I will offer to fax or email to them. (I'm assuming that after one or two calls, it will be pretty easy and the words will just roll off my tongue.)
3. Then, I will contact my own secretary of state (thankfully, Illinois is not on this list, but we have plenty of our own problems) and discuss how we can work together on spreading the word about the problems with the EAC, electronic voting and HR 811.
4. Then, I will write another OpEdNews piece and tell you how it went!

Hopefully, you will all take heart from this boiled-down, step-by-step template and be empowered to follow the steps yourselves. Let me know where you got and what they said. Trust me when I say that this kind of approach can make a difference. In the meantime, we will be creating dozens - hopefully even hundreds or thousands - of citizen journalists who are stepping forward to do the job so disastrously abandoned by the mainstream corporate press.

I almost forgot the last step:

5. I will take my shoes off, put my feet up, and heave a big sigh of relief. Thanks, Brad, for making me do this. I feel a lot better now. And it wasn't even as hard as I thought it would be.

Authors Bio:

Joan Brunwasser of Citizens for Election Reform is a citizen activist working hard to restore and preserve free and fair elections. She started a lending library project to distribute the "Invisible Ballots" DVD in mid September 2005. In the following eighteen months, she loaned the DVD to almost 3,200 'borrowers' in 37 states, DC, Puerto Rico, Canada, Holland, England, Ireland and Japan. Since the DVD's release in spring 2004, there have been numerous studies and hacks, all of them critical of electronic voting. Her new focus is on raising public awareness about what's wrong with our elections and how to achieve a fair, secure and transparent election system. She welcomes your help in spreading the word. She has been the Voting Integrity Editor for Op Ed News since December 2005.

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Millender-McDonald reveals few details

After feeling ill earlier this month, House Administration Chairwoman Juanita Millender-McDonald (D) visited at least one doctor in Washington, D.C., and returned home to California prior to the April recess for several more sessions with physicians before informing House Democratic leaders Friday that she is suffering from cancer.

According to Millender-McDonald's chief of staff, Bandele McQueen, the Congresswoman, who has closely guarded information regarding her health over the years, has not even told her Capitol Hill staff what type of cancer she is suffering from or how aggressive it might be.

"We appreciate the concerns folks have for the Congresswoman, but at this point we don't have any more information on the type of cancer or the type of treatment," McQueen said.

Millender-McDonald's official leave of absence, granted by Majority Leader Steny Hoyer (D-Md.), extends through May 25.

"She's not going into the office this week or anything, but by being in the district she will have the ability, whether it's working from home or going into the office, to continue to conduct the business of the 37th," said McQueen. "But right now the main focus is making sure that she's well. Hence she's asked for this leave of absence. ... She is hoping to return as soon as possible."

However, McQueen added, "I would be lying to you if my concern is her return to Congress. My concern is her return to good health."

He added that Millender-McDonald has medical staff attending to her at home on an hourly basis, but he dismissed rumors that it was any kind of hospice situation.

On Wednesday, Millender-McDonald was elected, in absentia, to serve as vice chairwoman of the Joint Committee on the Library at the panel's organizational hearing.

During that session, several Members on both sides of the aisle expressed their sympathy and wishes for a speedy recovery, including Sen. Dianne Feinstein (D-Calif.), the newly elected chairwoman of the Library of Congress panel.

Immediately afterward, the Joint Committee on Printing held its organizational hearing, in which House Administration Vice Chairman Robert Brady (D-Calif.) was elected chairman of the joint panel (Feinstein will serve as his vice chairwoman). While the Printing gavel has in the past fallen to the chairman of the House Administration Committee, the decision that Brady would run the committee in the 110th Congress was made with input from the Democratic leadership well before Millender-McDonald announced her illness, according to Brady's chief of staff.

Meanwhile Brady will be leading the House Administration Committee during Millender-McDonald's absence, although he stressed on Wednesday that "I'm just keeping things warm until the lady comes back."

But while giving his remarks at the joint committee's meeting, House Administration ranking member Vernon Ehlers (R-Mich.) – who also is serving on both joint panels and led the Library committee in the 109th Congress – jokingly referred to Brady as "Mr. Mayor" in reference to his ongoing campaign for mayor of Philadelphia.

The primary for that election will be held more than a week before Millender-McDonald is due to return from her leave of absence.

When asked about the joke after the hearing, Ehlers simply noted that Brady will have "a very busy life" chairing the committee while seeking another office.

"But," he added, "it's Speaker [Nancy] Pelosi's (D-Calif.) appointment and he's going to have to decide if

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he wants to do it" while he's actively campaigning.

But even prior to this week's news about Millender-McDonald's illness, Republican committee staff have raised concerns about the panel's inaction in certain areas of jurisdiction including the Capitol Visitor Center project and Smithsonian Institution. Meanwhile, other House and Senate committees have been holding hearings on those subjects.

Earlier this month, Ehlers wrote a letter to Millender-McDonald criticizing Democratic leaders for not yet appointing Members to serve on the Franking Commission, which oversees House lawmakers' official mail. Ehlers pointed to a rise in unsolicited e-mail as "evidence of the toll that a lack of oversight has taken."

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029931

Margaret Sims /EAC/GOV
04/18/2007 05:40 PM

To Jeannie Layson/EAC/GOV@EAC
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
bcc
Subject Re: Need your help ASAP 

Jeannie:

I did not receive your request in time to type responses on my blackberry by 2 PM, given the information needed. Here are the answers to your questions:

1. Why did we only contact DOJ officials regarding the accuracy of their interviews?

As far as I know, we didn't. contact DOJ officials about this except in response to concerns they had previously expressed to us. Also, I don't believe we ever allowed DOJ to edit the summaries. (I certainly didn't.) I believe the consultants and I discussed the idea of having all the interviewees review their respective interview summaries, but the consultants objected to the idea and there were concerns that the all of the money remaining available was needed to complete the final report.

Craig Donsanto, Election Crimes Branch, saw the summary of his interview among the documents provided to the Working Group (prior to the meeting of that group), and pointed out an important factual error. The summary, as originally written, portrayed DOJ as switching from the prosecution of conspiracies to the prosecution of individuals. I was present at this interview and this was not what Craig had said, nor is it supported by the information available on the election crimes pursued by that branch. DOJ continues to pursue conspiracies and, in addition, has begun to pursue individuals (specifically, double voting, felon voting and alien voting) in an effort to deter others from election crime.

To my knowledge, John Tanner, Voting Section, Civil Rights Division, had not seen the consultants' full summary of his interview; but he expressed concern to Tova Wang and EAC about the consultants' characterization of the interviews with Donsanto and him that had been included in the May 2006 status report. This report was provided to the members of the EAC Standards and Advisory Boards. Per HAVA requirements, the Voting Section is represented on the Advisory Board. Tanner pointed to the following errors:

- First, the consultants stated that DOJ was not pursuing voter suppression cases. Tanner responded that "[t]he Department has brought two 11(b) cases, one of the two in this Administration. The focus of DOJ activity has shifted, in fact, to voter suppression as there are fewer cases over voter dilution (challenges to at-large election systems, etc.) being brought by anyone as the number of jurisdictions with at-large election systems has shrunk dramatically. This Administration has, in fact, brought far more voter-suppression cases ... than ever in the past, including a majority of all cases under Sections 203 and 208 of the Act, and such key recent Section 2 cases as US v. City of Boston and US v. Long County, Georgia."
- Second, the consultants implied that DOJ is not pursuing instances of unequal implementation of ID rules. Tanner's response was that "[c]hallenges based on race and unequal implementation of ID rules are indeed actionable and we have brought lawsuits, such as in Boston and Long County; we have not identified instances of such discrimination in which we have not taken action."

Tanner also pointed to the consultants' refusal during the interview to define what they meant by "voter intimidation", which Tanner suspected did not jibe with the meaning of the term in federal prosecutions and probably contributed to misunderstandings. (Federal voter intimidation prosecutions require the threat of economic or physical harm.)

By the way, both of these officials are career attorneys, not political appointees. They have years of service at DOJ, working under a number of different administrations.

029932

2. Exactly what did we change and why?

In the case of the Donsanto interview summary, I spoke with our consultants and asked them to make the correction. At first, they both refused. Later, they revised the summary to be a little less blatant, but the implication that there had been a complete change in approach remained. We revised the summary to clearly indicate that prosecution of conspiracies continues. The revised paragraph is on page 4 of the published summary. We also added an intro paragraph similar to other interview summaries submitted by the consultants to summarize the enforcement authority of the Election Crimes Branch and to distinguish it from the Voting Section, Civil Rights Division.

In the case of the actual John Tanner interview summary, we added an intro paragraph similar to other interview summaries submitted by the consultants to summarize the enforcement authority of the Voting Section and to distinguish it from the Election Crimes Branch. We also moved the consultants' note about the refusal to share certain internal working papers to the end of the summary because it seemed to distract from the main interview points if left as an introduction.

Making the distinction between the Election Crimes Branch and the Voting Section is important. The Voting Section brings cases involving "systemic" discrimination because federal voting statutes focus on discriminatory action by local governments. It is criminal statutes that involve malfeasance by individuals and that are enforced by the Election Crimes Branch through Us Attorneys' offices. The difference is key to understanding federal election law enforcement.

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/18/2007 12:17 PM

To psims@eac.gov

cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC

Subject Need your help ASAP

Peg,

If possible, I need answers for these questions in reference to the vote fraud/voter intimidation project by 2 p.m. today for an inquiry for Congressional Quarterly:

1. Why did we only contact DOJ officials regarding the accuracy of their interviews?
2. Exactly what did we change and why?

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029933

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029934

Juliet E. Hodgkins/EAC/GOV
04/18/2007 12:19 PM

To Jeannie Layson/EAC/GOV@EAC
cc
bcc
Subject Re: Need your help ASAP 

History:  This message has been replied to.

I sent this comparison to the committee. It shows in track changes the changes that were made to the interview summaries (I assume that is what you are looking for).



Summaries of Interviews with Donsanto-Tanner revised.pdf

Juliet T. Hodgkins
General Counsel
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Washington, DC 20005
(202) 566-3100
Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/18/2007 12:17 PM

To psims@eac.gov
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
Subject Need your help ASAP

Peg,

If possible, I need answers for these questions in reference to the vote fraud/voter intimidation project by 2 p.m. today for an inquiry for Congressional Quarterly:

1. Why did we only contact DOJ officials regarding the accuracy of their interviews?
2. Exactly what did we change and why?

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029935

Deliberative Process Privilege

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity
Section, U.S. Department of Justice
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising
federal criminal investigations and prosecutions of election crimes.

Questions

How are Prosecution Decisions Made?

Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it. Donsanto gives possible theories for investigation. Donsanto and Noel Hillman will decide whether to farm out the case to an Assistant U.S. Attorney (AUSA). Donsanto uses a concept called predication. In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source. Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution. The head of that division is John Tanner. There is a lot of cooperation between the Voting Section and the Election Crimes Branch.

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

Does it Matter if the Complaint Comes from a Member of a Racial Minority?

029936

No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

What Kinds of Complaints Would Routinely Override Principles of Federalism?

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office on the ballot.

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons: federal districts draw from a bigger and more diverse jury pool; the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected; DOJ has more resources -- local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them; DOJ can use the grand jury process as a discovery technique and to test the strength of the case.

In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" *McNally*, did not include voter fraud.

As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

Other Information

The Department has held four symposia for District Election Officers (DEOs) and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. ~~(Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).~~

There are two types of attorneys in the division: prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

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Donsanto provided us with three case lists: ~~Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006; and cases closed for lack of evidence as of January 13, 2006.~~

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, *the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.*

Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, (Charges were not brought against individuals – those cases went un-prosecuted. This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes, he Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

1. Felon voters in Milwaukee.

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2. Alien voters in the Southern District of Florida. FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.

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3. Double voters in a variety of jurisdictions.

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The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot

Interview with John Tanner, ~~Director~~ Chief, Voting Section, Civil Rights Division,
U.S. Department of Justice

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake phone logs; data or even general information from the Interactive Case Management (ICM) system its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss in any manner any current investigations or cases the section is involved in. He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity Section as Craig Donsanto described it, typically focuses looks only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, ~~have made it so now~~ the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do

with the complaint, the section errs on the side of referring it criminally to avoid having any because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been a formal investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the dDepartment was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the ~~voting~~ Voting Section to become involved.

Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never

formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filing as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations.

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint in-take phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section attorney who is observing

elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.

029942

Jeannie Layson /EAC/GOV
04/17/2007 02:14 PM

To cbertelson@post-dispatch.com,
khorrigan@post-dispatch.com
cc
bcc

Subject EAC and the Vote Fraud and Voter Intimidation Project

Ms. Bertelson and Mr. Horrigan,
Thank you so much for speaking with me. Here's information about the vote fraud/voter intimidation project:

The vote fraud and voter intimidation project began in Sept. 2004. As I said, the statement that this project had been five years in the making is incorrect -- that predates the creation of the EAC. Commissioners were appointed in Dec. 2003, and the agency's first year of operations was 2004 with a \$1.2 million operating budget.

Also, any assertion that the administration edited the final report, Election Crimes: An Initial Review and Recommendations for Further Study, is absolutely false. And just to be clear, at no point in this process did the administration play any role at any time during the life of this project. As we discussed, EAC contracted with two consultants to do two things: define "vote fraud" and "voter intimidation" and provide recommendations for future study based on their review of court cases, literature and interviews with 24 people who have experience in these areas. On page 24 of the final report, there are links to appendices which contain the consultants' bios, as well as interview summaries, and all of the court cases and literature they reviewed. EAC advisory boards were briefed on this project at a public meeting in May 2006.

EAC staff reviewed every article, every court case and every interview for accuracy, as we have a responsibility to do. This review process was conducted within the agency by EAC staff. After the staff reviewed the document and edited it for accuracy, added information reflecting which recommendations the commission should adopt, it presented its recommended report to the commission. The commission adopted the final report at a public meeting in December 2006. This meeting was also webcast.

Since the adoption of the final report, the Commission's actions have been questioned by Members of Congress, the media and others. Yesterday, EAC Chair Donetta Davidson requested that the inspector general conduct a review surrounding the circumstances of this project and the voter ID research project. Go here to read the Commission's statement, the memo to the IG and the letters we've received from Congress.

Criticism is fair and healthy. However, I request that criticism be based on facts. It is not factual to state that it took five years to complete this project. And it is not factual to state that the administration played any role -- editing or otherwise -- in this project.

I request a correction that clarifies both of the above points. Also, I think it would be fair to point out that the chair has asked the IG to look into the process. You could link to the IG memo and let readers see our point of view, and the point of view of those who are critical of EAC decisions.

I thank both of you for your consideration in this matter. And again, let me reiterate the fair and professional treatment EAC has received from the reporters in the DC bureau. We look forward to answering any questions the editorial board or the news side of your organization has about EAC or its decisions or actions. Please don't hesitate to call me if I can be of assistance in the future.

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029943

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Margaret Sims /EAC/GOV
04/17/2007 01:27 PM

To Jeannie Layson/EAC/GOV@EAC
cc Juliet E. Hodgkins/EAC/GOV@EAC
bcc
Subject Re: Vote fraud report 

As far as I know, you are absolutely correct! Julie did the bulk of the rewrite and used my analyses of the preliminary info submitted by our contractors. I know that I had no contact with the administration regarding this study. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
04/17/2007 01:16 PM

To psims@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,
jthompson@eac.gov
cc
Subject Vote fraud report

The St. Louis Post Dispatch wrote an editorial that said the administration edited our report. I am almost absolutely sure that is not true, but I wanted to confirm that with you before I request a correction. Thanks.

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029945

Juliet E. Hodgkins/EAC/GOV
04/17/2007 01:25 PM

To Jeannie Layson/EAC/GOV@EAC
cc
bcc
Subject Re: Vote fraud report 

I did not request that the White House or administration review our report, nor did I send it to them.

Juliet T. Hodgkins
General Counsel
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(202) 566-3100
Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
04/17/2007 01:16 PM

To psims@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,
jthompson@eac.gov
cc
Subject Vote fraud report

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029940



Sheila A. Banks/EAC/GOV
04/17/2007 11:28 AM

To jlayson@eac.gov
cc
bcc

Subject Statement for PDF'ing

History:  This message has been replied to.



Hillman Statement on the release of the voting fraud report 12.01.06 (DRAFT).doc



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
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**STATEMENT BY ELECTION ASSISTANCE COMMISSIONER GRACIA HILLMAN ON
“THE EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY”**

Washington, D.C. – December 7 – Today the Election Assistance Commission (EAC) voted on the findings of the “Voting Fraud and Voter Intimidation Study” and accepted recommendations to conduct a comprehensive study to assess all claims, charges and prosecutions of voting crimes. This report, which was largely based on anecdotal information, was months in development and is the result of two independent researchers’ assessment of what characterizes voting fraud and voter intimidation in the United States.

Today’s vote sets in motion the EAC’s acceptance of the researchers’ and subsequent working group’s core recommendation that the matter of voting fraud and voter intimidation deserves more than just an anecdotal assessment, but rather a “comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes” based on “hard data on complaints, charges and prosecutions”.

While I would have liked this report to have been made to the recent 2006 mid-term elections, I am confident that the EAC is on the right path toward next steps which include:

- 1) A comprehensive survey/study on voting fraud and voter intimidation based on hard data by the end of calendar year 2007, and
- 2) By mid-2008, a set of standards/best practices for state election officials and prosecuting authorities to use in assessing legitimate claims and bringing them to justice.

For the EAC’s full report and news release on the “Voting Fraud and Voter Intimidation Study” please visit www.eac.gov.

029948

Jeannie Layson /EAC/GOV
04/16/2007 05:54 PM

To "Adam Ambrogi" <Adam_Ambrogi@rules.senate.gov>
cc
bcc
Subject Re: Donetta requests IG review 

I'll check on the status of the response and I'll let them know about the hearing. Thanks again...

Sent from my BlackBerry Wireless Handheld

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

From: "Ambrogi, Adam (Rules)" [Adam_Ambrogi@rules.senate.gov]
Sent: 04/16/2007 05:54 PM AST
To: Jeannie Layson
Subject: RE: Donetta requests IG review

Thanks, Jeannie— I appreciate the 'head's up.' I had heard that from Bryan's list serve a couple of minutes before your email. I will make sure that Howard has seen the release and memo. I will forward it to Senator Durbin's Appropriations staff as well. When you have an estimated timeline for the Commission's projected response to Sens. Durbin and Feinstein, please let me know.

Also- I've been asked to let you all know that Chairman Feinstein has set a tentative date of June 13th for a hearing on the Election Assistance Commission. Beyond the tentative date—there are no other details.

I hope that you're doing ok— drop me a line or call if there's anything else that's new.

Best,
Adam

Adam D. Ambrogi
Counsel
Senate Committee on Rules and Administration
Russell Senate Office Building, Room 325B
Washington, D.C. 20510
202-224-0279

From: jlayson@eac.gov [mailto:jlayson@eac.gov]
Sent: Monday, April 16, 2007 4:10 PM
To: Ambrogi, Adam (Rules)
Subject: Donetta requests IG review

Just wanted to make sure you knew that Donetta has requested that the IG review the circumstances surrounding the voter ID and the vote fraud and voter intimidation research projects. Info is attached. Let me know if you have questions or need more info... Howard Gantman is on our distribution list, so he should have received this as well.

029949

Hope all is well with you...

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029930

Jeannie Layson /EAC/GOV
04/16/2007 04:03 PM

To "Hicks, Thomas"
<Thomas.Hicks@mail.house.gov>@GSAEXTERNAL
cc
bcc
Subject RE: FYI 

I figured...

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Phone: 202-566-3100
www.eac.gov
"Hicks, Thomas" <Thomas.Hicks@mail.house.gov>



"Hicks, Thomas"
<Thomas.Hicks@mail.house.gov>
04/16/2007 03:59 PM

To jlayson@eac.gov
cc
Subject RE: FYI

too late.~)

Thomas Hicks, JD
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515-6167
202-225-2061 (phone)
202-225-7664 (fax)

From: jlayson@eac.gov [mailto:jlayson@eac.gov]
Sent: Monday, April 16, 2007 3:57 PM
To: Hicks, Thomas
Subject: FYI

Just wanted to give you a heads up that Donetta requested the IG review circumstances surrounding voter ID and vote fraud & intimidation projects.

Go [here](#) for more info.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW

029951

Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov



"Bryan Whitener"
<bwhitener@eac.gov>

04/16/2007 03:38 PM

Please respond to
bwhitener@eac.gov

To jlayson@eac.gov

cc

bcc

Subject EAC Requests Review of Voter ID, Vote Fraud & Voter
Intimidation Research Projects, 04-16-07



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

For Immediate Release

April 16, 2007

Contact:

Jeannie Layson
Bryan Whitener
(202) 566-3100

EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

WASHINGTON - U.S. Election Assistance Commission (EAC) Chair Donetta Davidson today issued a formal request to the commission's inspector general to conduct a review of the commission's contracting procedures, including a review of two recent projects focusing on voter identification and vote fraud and voter intimidation. The chair's memo to the inspector general is attached (to view the memo and attachments, click [here](#)).

"The actions taken by the commission regarding these research projects have been challenged, and the commissioners and I agree that it is appropriate and necessary to ask the inspector general to review this matter," said EAC Chair Davidson.

Chair Davidson has requested that the inspector general specifically review the circumstances surrounding the issuance and management of the voter identification research project and the vote fraud and voter intimidation research project.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering

029953

payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary E. Rodriguez, Caroline Hunter and Gracia Hillman.

###

Jeannie Layson /EAC/GOV

04/16/2007 12:25 PM

To Gracia Hillman/EAC/GOV@EAC

cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.

bcc

Subject Re: IG Press Release 

The IG's request contains the following information, which is what was in the earlier version of the press release.

This report was the culmination of research conducted by Tova Wang and Job Serebrov, who were tasked with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and working group deliberations. This report should include any recommendations for future EAC research resulting from this effort."

Jeannie Layson
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Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV

04/16/2007 12:11 PM

To Jeannie Layson/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

Subject Re: IG Press Release 

What language did we use in the request to our IG?

Sent from my BlackBerry Wireless Handheld

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

From: Jeannie Layson

Sent: 04/16/2007 12:01 PM EDT

To: Caroline Hunter

Cc: Donetta Davidson; Gracia Hillman; Juliet Hodgkins; Rosemary Rodriguez; Thomas Wilkey

Subject: Re: IG Press Release

029955

Sorry bout that... is this sentence acceptable to everyone? It's the last sentence in the fifth paragraph.
Revised press release is attached.

"EAC staff reviewed the consultants' material, and found inconsistencies in their conclusions and the data they submitted. The material in the final report was motivated by a responsibility, especially as a federal agency, to issue findings only when they are supported by data that can enable EAC to firmly defend its conclusions."

Jeannie Layson
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Phone: 202-566-3100
www.eac.gov

Caroline C.
Hunter/EAC/GOV

To Jeannie Layson/EAC/GOV@EAC
04/16/2007 11:38 AM cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary
E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subj Re: IG Press Release [Link](#)
ect

I was referring to the fraud study and why we did not release the contractor's report

Caroline C. Hunter
Commissioner
Election Assistance Commission
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(202) 566-3107
chunter@eac.gov
www.eac.gov

Jeannie
Layson/EAC/GOV

To Caroline C. Hunter/EAC/GOV@EAC
04/16/2007 11:33 AM cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary
E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subj Re: IG Press Release [Link](#)
ect

029956

It's in there... first sentence in the fourth paragraph: "Last month, the commission voted unanimously to launch a comprehensive study focused on voter identification laws **after concluding that initial research it received in a report was not sufficient to draw any conclusions.**"

Please let me know if that is sufficient.

Jeannie Layson
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Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Caroline C.
Hunter/EAC/GOV

04/16/2007 11:28 AM To Jeannie Layson/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
Subj Re: IG Press Release [Link](#)
ect

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Caroline C. Hunter
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www.eac.gov

Jeannie
Layson/EAC/GOV

029957

04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC

Subje IG Press Release
ct

Commissioners,

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After you give me the okay on the press release, I will send everything to staff before releasing it.

Jeannie Layson
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029958

Rosemary E.
Rodriguez/EAC/GOV
04/16/2007 12:19 PM

To Jeannie Layson/EAC/GOV
cc Caroline C. Hunter/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, ghillman@eac.gov, Juliet E.
Hodgkins/EAC/GOV@EAC, Thomas R.
bcc
Subject Re: IG Press Release 

Since it's Donetta's statement, I think she should her consent is important. I don't see a need to defend our actions in this release but simply to announce that we have asked the IG to take a look.

Rosemary E. Rodriguez
Commissioner
United States Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005
Telephone: 202-566-3104
Facsimile: 202-566-3127
www.eac.gov
rrodriguez@eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
04/16/2007 12:01 PM

To Caroline C. Hunter/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
Subject Re: IG Press Release 

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Revised press release is attached.

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EAC IGRrequest 04-16-07FINAL.doc Jeannie Layson
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Phone: 202-566-3100
www.eac.gov
Caroline C. Hunter/EAC/GOV

029959

Caroline C. Hunter/EAC/GOV

04/16/2007 11:38 AM

To Jeannie Layson/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC

Subject Re: IG Press Release 

I was referring to the fraud study and why we did not release the contractor's report

Caroline C. Hunter
Commissioner
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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/16/2007 11:33 AM

To Caroline C. Hunter/EAC/GOV@EAC

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Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC

Subject Re: IG Press Release 

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Please let me know if that is sufficient.

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www.eac.gov
Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV

04/16/2007 11:28 AM

To Jeannie Layson/EAC/GOV@EAC

cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.

029960

Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
Subject Re: IG Press Release 

Could we pls add a sentence about why we did not adopt the fraud report - ie- had conclusions that were not supported by the underlying research.

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Hodgkins/EAC/GOV@EAC
Subject IG Press Release

Commissioners,

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EAC IGRequest 04-16-07.doc

Jeannie Layson
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029961



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

EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

For Immediate Release
April 16, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – U.S. Election Assistance Commission (EAC) Chair Donetta Davidson today issued a formal request to the commission's inspector general to conduct a review of the commission's contracting procedures, including a review of two recent projects focusing on voter identification and vote fraud and voter intimidation. The chair's memo to the inspector general is attached.

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###

**Deliberative Process
Privilege**

029952

Caroline C. Hunter/EAC/GOV
04/16/2007 11:38 AM

To Jeannie Layson/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
bcc

Subject Re: IG Press Release

History: This message has been replied to.

I was referring to the fraud study and why we did not release the contractor's report

Caroline C. Hunter
Commissioner
Election Assistance Commission
1225 New York Avenue, NW
Suite 1100
Washington, DC 20005
(202) 566-3107
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www.eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
04/16/2007 11:33 AM

To Caroline C. Hunter/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
Subject Re: IG Press Release

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www.eac.gov
Caroline C. Hunter/EAC/GOV

Caroline C. Hunter/EAC/GOV
04/16/2007 11:28 AM

To Jeannie Layson/EAC/GOV@EAC
cc Donetta L. Davidson/EAC/GOV@EAC, ghillman@eac.gov,
Juliet E. Hodgkins/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.

029963

Wilkey/EAC/GOV@EAC
Subject Re: IG Press Release 

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

04/16/2007 11:13 AM

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Rodriguez/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Hodgkins/EAC/GOV@EAC
Subject IG Press Release

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EAC IGRequest 04-16-07.doc

Jeannie Layson
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029964



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

EAC Requests Review of Voter ID, Vote Fraud and Voter Intimidation Research Projects

For Immediate Release
April 16, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

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Jeannie Layson /EAC/GOV
04/16/2007 11:13 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
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bcc

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EAC IGRequest 04-16-07.doc

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Jeannie Layson /EAC/GOV
04/16/2007 10:18 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Hodgkins/EAC/GOV@EAC
bcc

Subject Chair Requests Internal Review

Commissioners,

The chair has asked me to provide you with the memo she just submitted to Curtis Crider, requesting a review of our contracting procedures surrounding the voter identification and vote fraud and voter intimidation research projects. She has asked me to write a press release about this decision, which I will send to you shortly. She requests that we incorporate the commission's request into the letter to the advisory boards and to Congresswoman Lofgren. She also requests that we respond to Sen. Feinstein's letter, letting her know that we are working to comply with her request, but we wanted to alert her to the action we've taken.

I am going to circulate this to the staff so everyone will be aware of this action. Please let me know if you have any questions, and I will have a press release for your review shortly. Attached to the press release will be this memo, letters from Members of Congress regarding this issue, and the recent statements from Congressmen Hinchey and Serrano.



IG Review Req. 4-16-07.doc

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
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Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

029968



April 16, 2007

MEMORANDUM

To: EAC Inspector General Curtis Crider
Fr: EAC Chair Donetta Davidson
Cc: Commissioners Rodriguez, Hillman and Hunter, Tom Wilkey, and Julie Hodgkins
RE: EAC requests review of contracting procedures

On Friday, April 13, each of my three colleagues – Rosemary Rodriguez, Gracia Hillman, and Caroline Hunter -- agreed with my recommendation that we issue the following formal request to the Commission’s Office of Inspector General to review the circumstances surrounding two recent EAC research projects – vote fraud and voter intimidation and voter identification.

Background

The U.S. Election Assistance Commission (EAC) is an independent, bipartisan Commission created by the Help America Vote Act (HAVA) of 2002.

EAC develops guidance to meet HAVA requirements, adopts voluntary voting system guidelines, accredits voting system test laboratories, certifies voting systems and audits the use of HAVA funds. HAVA also directs EAC to maintain the national mail voter registration form developed in accordance with the National Voter Registration Act (NVRA) of 1993.

The Commission serves as a national clearinghouse and resource of information regarding election administration. It is under the Commission’s clearinghouse role that research projects are conducted with the goal of providing information that will lead to improvements in election administration, as well as inform the public about how, where and when we vote.

The voter identification research was conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics (“Contractor”). The contract, awarded in May 2005, required the Contractor to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches. Last month, the commission voted

unanimously not to adopt the report, citing concerns with its methodology, but voted to release all of the data provided by the Contractor.

The vote fraud and voter intimidation research was conducted by Tova Wang and Job Serebrov ("Consultants"). The contracts, awarded in September 2005, issued to these Consultants tasked them with defining the terms vote fraud and voter intimidation and providing recommendations how to conduct extensive research in the future on these topics. The contract stated that the Consultants were responsible for "creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future EAC research resulting from this effort."

Review Request

The actions taken by the Commission regarding both the voter identification and the vote fraud and voter intimidation research projects have been challenged. Specifically, Members of Congress, the media, and the public have suggested that political motivations may have been part of the Commission's decision making process regarding these two projects. Also, the Commission has been criticized for the amount of taxpayer dollars that were spent on these two projects, as well as how efficiently these projects were managed.

The Commission takes these allegations very seriously, and we request that you fully review the following issues and provide the Commission and the Congress with a report of your findings as soon as possible. The Commission stands ready to assist you in these efforts and will provide whatever information, including memos, emails and other documents you will need. Cooperating with your review will be the staff's top priority.

1. Current Commission policy regarding awarding and managing research contracts.
2. Issuance and management of the vote fraud and voter intimidation contract.
3. Circumstances surrounding the receipt of information from Consultants regarding the vote fraud and voter intimidation project.
4. Circumstances surrounding staff efforts to write a final report for Commission consideration.
5. Identification of staff members who assisted in the editing and collaboration of the final vote fraud and voter intimidation report for Commission consideration.
6. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the vote fraud and voter intimidation project.
7. Circumstances surrounding Commission discussion and deliberation of final adoption of *Election Crimes: An Initial Review and Recommendation for Further Study*.
8. Issuance and management of the voter identification contract.
9. Circumstances surrounding the receipt of information from Contractor regarding the voter identification report.
10. Identification of staff members who assisted in the editing, collaboration, and recommendation to the Commission regarding final adoption of the voter identification report.

11. Staff and/or Commissioner collaboration with political entities or other federal agencies regarding the voter identification project.
12. Circumstances surrounding Commission deliberation whether to adopt a final voter identification report.

For your information, I have attached statements and related correspondence from Members of Congress, and a statement issued by the Commission regarding the criticism.

It is our hope that your findings will instruct us how to move forward in a more efficient, effective and transparent manner. The Commission takes its mandates under HAVA very seriously, and this small Commission has an enormous amount of work to conduct, including testing and certifying voting equipment, providing guidance and assistance to election officials, and auditing the proper use of the \$3.1 billion that was distributed under HAVA.

We look forward to your findings so that we may take the actions necessary to improve the way we conceive research projects, manage research contracts, and make decisions regarding the final release of data provided to the Commission from a third party.

Rosemary E.
Rodriguez/EAC/GOV
04/12/2007 12:25 PM

To Jeannie Layson/EAC/GOV@EAC
cc Bert A. Benavides/EAC/GOV@EAC, bwhitener@eac.gov,
Caroline C. Hunter/EAC/GOV@EAC, Donetta L.
Davidson/EAC/GOV@EAC, Elieen L.
bcc
Subject Re: FOIA Request

I do not have anything. Thanks.

Rosemary E. Rodriguez
Commissioner
United States Election Assistance Commission
1225 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005
Telephone: 202-566-3104
Facsimile: 202-566-3127
www.eac.gov
rrodriguez@eac.gov

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC, jthompson@eac.gov,
klynndyson@eac.gov, psims@eac.gov, sbanks@eac.gov,
Elieen L. Kuala/EAC/GOV@EAC, Bert A.
Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV,
bwhitener@eac.gov, stephanie.wolson@gmail.com
cc
Subject FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100

029972

Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

029973



Sheila A. Banks/EAC/GOV
04/12/2007 11:14 AM

To jlayson@eac.gov
cc
bcc
Subject Research Document



Voter_Intimidation Synopsis.doc

Statement	Respondents	Source of Data
<p>There is little polling place fraud or at least much less than is claimed, including voter impersonation, "dead" voters, non-citizen voting and felon voters.</p>	<p>Harry Van Sickle & Larry Boyle</p> <p>Sharon Priest</p> <p>Douglas Webber</p> <p>John Ravitz</p> <p>Kevin Kennedy</p> <p>Lori Minnite</p> <p>Wendy Weiser</p> <p>Neil Bradley</p>	<p>No data support. Cited local case of voter intimidation.</p> <p>No data support - anecdotal references.</p> <p>No prosecuted cases of polling place fraud, "but it does happen".</p> <p>No data source.</p> <p>Wisconsin case in spring of 2003 or 2004.</p> <p>Securing the Vote report</p> <p>Brennan Center report.</p> <p>No data source.</p>
<p>New Identification requirements are the modern version of voter intimidation and suppression.</p>	<p>Joe Rich</p> <p>Wade Henderson</p> <p>Bill Groth</p> <p>Heather Dawn Thompson</p>	<p>No data source.</p> <p>No data source.</p> <p>No data source.</p> <p>Cases in South Dakota – No ID, can't vote; some voters lived up to 60 miles away and suppression by party structures.</p> <p>Cases in Minnesota – would not allow tribal ID.</p>

029975

<p>Native American communities</p>	<p>Heather Dawn Thompson</p> <ul style="list-style-type: none"> • Power of the native vote and active participation has resulted in an increase in intimidation tactics. • Non-Indians running elections in Native communities. • Photo ID • Poll Monitoring • Vote Buying and Fraud <p>Rebecca Vigil-Giron</p>	<p>Washington State 2000 Cantwell election & South Dakota 2002 Johnson election where Native American voters made a difference.</p> <p>South Dakota</p> <p>See above Voter ID.</p> <p>U.S. Attorney chose Election Day to give out subpoenas.</p> <p>No data source.</p> <p>No data source</p>
------------------------------------	--	---

029970

Jeannie Layson /EAC/GOV
04/12/2007 10:51 AM

To Margaret Sims/EAC/GOV@EAC
cc
bcc
Subject Re: FOIA Request 

Peg,
No problem. I will cull from what you sent earlier. I just wanted to make sure there were no other records that had been generated since then.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV
04/12/2007 10:45 AM

To Jeannie Layson/EAC/GOV@EAC
cc
Subject Re: FOIA Request 

Jeannie:

I haven't had any relevant emails with Job or Tova that occurred after the batch I gave you in response to the Brennan Center FOIA. I last heard from Tova in August 2006 and included that message in the stuff I sent you earlier. Job and I corresponded in February 2007 about how his pay had been reported (what amounts were reported in which tax year). As there was no discussion of the research project itself, I don't think that is relevant.

If you could reuse the information I provided last time, I would really appreciate it. (It took me hours to pull that together and I would rather not have to repeat that.) I think the stuff I sent you earlier also included correspondence with Working Group and other folks outside of the EAC, which would need to be culled.. — Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline C. Hunter/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, jthompson@eac.gov, klynndyson@eac.gov, psims@eac.gov, sbanks@eac.gov, Elieen L. Kuala/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV, bwhitener@eac.gov, stephanie.wolson@gmail.com
cc
Subject FOIA Request

029977

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

Some of you have provided similar information in the past, but I will need another complete submission that includes any related files that may have been generated since your last submission.

Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

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

Jeannie Layson /EAC/GOV
04/12/2007 08:38 AM

To Donetta L. Davidson/EAC/GOV, ghillman@eac.gov, Caroline
C. Hunter/EAC/GOV@EAC, Rosemary E.
Rodriguez/EAC/GOV@EAC, Thomas R.

cc

bcc

Subject FOIA Request

Today I will circulate a formal FOIA request to all of you. Please note that this request is from a journalist. The information I circulate will include a copy of the original request, which was made by the DC bureau of McClatchy Newspapers. An abbreviated version of the request follows:

"Copies of all emails between Job Serebrov and Election Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for EAC."

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Please anticipate a formal request to be distributed to everyone today, and take note that the deadline to provide this information is April 30. Thank you.

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

029979

Jeannie Layson /EAC/GOV
04/11/2007 01:04 PM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV
cc
bcc
Subject Fw: new foia

Okay... I think this is manageable.

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

— Forwarded by Jeannie Layson/EAC/GOV on 04/11/2007 01:02 PM —



"Gordon, Greg"
<ggordon@mcclatchydc.com
>
04/11/2007 10:32 AM

To jlayson@eac.gov
cc
Subject new foia

April 11, 2007

Ms. Jeannie Layson
Director of Communications
Suite 110
1225 New York Avenue NW
Washington, D.C. 20005
Fax: 202-566-3127
Phone: 202-566-3100
HAVAinfo@eac.gov

Dear Ms. Layson:

This is an official request under the Freedom of Information Act, 5 U.S.C., 552 as amended.

I am writing on behalf of McClatchy Newspapers to request copies of all emails between Job Serebrov and Elections Assistance Commission staff or members and all emails between Tova Wang and commission staff or members pertaining to a voter fraud study the two were contracted to perform for the EAC.

029980

In the event that this request results in research or copying, McClatchy Newspapers requests a public interest fee waiver because the material being sought is likely to be used in a newspaper story. We would argue strongly that there is a significant public interest in our reviewing the material being sought. As the nation's second largest newspaper group with 32 daily newspapers and a new service serving 400 newspapers, McClatchy easily qualifies as acting in the public interest.

If possible, I would appreciate your expediting this request, especially any emails transmitted after the draft report was submitted, because of the obvious topical import of these documents.

Should this letter prompt questions, please feel free to phone me at 202-383-0005. Thanks for your assistance.

Sincerely,

Gregory Gordon
McClatchy Newspapers
Washington correspondent

Greg Gordon
National Correspondent
McClatchy Newspapers Washington Bureau
202-383-0005
ggordon@mcclatchydc.com

Visit McClatchy's 31 daily newspapers, including the Miami Herald, Sacramento Bee, Ft. Worth Star-Telegram, Kansas City Star, Charlotte Observer, Raleigh News & Observer and others, at www.mcclatchy.com.

029931

Gavin S. Gilmour/EAC/GOV
04/11/2007 11:52 AM

To Jeannie Layson/EAC/GOV, Juliet E.
Hodgkins/EAC/GOV@EAC
cc
bcc
Subject An unsolicited thought/statement

The stated purpose of the EAC's recently released "fraud report" was not to draw conclusions about fraud, but determine how the subject should be studied by the EAC. As such, it would inappropriate for the EAC to make unsupported conclusions regarding fraud in its preliminary report. Such speculative statements would only serve to compromise its future effort to study this matter in an nonpartisan fashion.

Gavin S. Gilmour
Deputy General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

THIS MESSAGE IS FOR ITS INTENDED RECIPIENT ONLY. IT IS A PRIVILEGED DOCUMENT AND SHALL NOT BE RELEASED TO A THIRD PARTY WITHOUT THE CONSENT OF THE SENDER.

029932

Jeannie Layson /EAC/GOV

To EAC Personnel

04/11/2007 10:58 AM

cc

bcc

Subject EAC Statement

Hello everyone,

I'm sure you have read the article in today's NYT about the voter fraud report this agency issued. Today, Congressmen Hinchey and Serrano have issued the following statement. Very shortly, EAC will post and distribute the attached statement to articulate our role and approach to conducting research and the steps we will take to improve our process. Please let me know if you have any questions about this, as I am sure we will all receive phone calls today about this issue. You may also direct people with questions to the statement that will be on the website. I will keep everyone informed as this situation evolves.



2007-11 [4-11-07] Statement on Research & Contracting Policies.pdf

For
Immediate
Release

April 11, 2007

Hinchey, Serrano Urge Non-Partisanship, Greater Transparency at Election Assistance Commission

Washington, DC - Today, Congressmen Maurice Hinchey (NY-22) and José E. Serrano (NY-16) urged the Election Assistance Commission (EAC) to act with greater transparency and without partisanship. The comments from the congressmen came as the House Appropriations Subcommittee on Financial Services and General Government released a draft version of an EAC report on voter fraud and intimidation that shows significant changes were made to the findings of outside experts before the final report was released.

"The EAC has an obligation to be forthright with the American people and operate transparently and in a non-partisan manner," said Congressman Hinchey, who requested the draft report from EAC Commissioner Donetta L. Davidson during subcommittee hearing last month. "The draft report was commissioned with taxpayer dollars upon a mandate from Congress so that we could learn more about voter fraud and intimidation. The need for this report is even more clear when we see the way in which the Bush administration is carrying out the electoral process and how this system is sliding towards corruption. In hiding a draft report from the public that is significantly different from the final version, the EAC has created a lot more questions than it has answered while stunting debate on the issue. In order for our democracy to function properly it is essential that our elections are free of any corruption and that includes ensuring that the EAC does not work to benefit one political party over the other. To achieve that goal we must have all the facts and opinions on the table, not just

029933

some of them. The EAC must never limit discussion and debate.”

“The EAC is charged with helping to ensure our elections are trustworthy and administered fairly,” said Congressman Serrano, who is Chair of the Appropriations Subcommittee that oversees the EAC budget. “I’m concerned if changes were made to the report on voter fraud because of partisan bias rather than impartial analysis. When you read the draft report side-by-side with the final version, it is clear that important conclusions of the experts who wrote the draft report were excluded from the final product. Among the excluded information is an analysis that undermines the notion that voter fraud is rampant

“I am concerned that the EAC did not publicly release the taxpayer-funded draft report, and I worry that political considerations may have played a role. We cannot have a politicized EAC, or one that yields to outside pressure. Our democracy, and the American people’s faith in it, is far more important than any short-term political advantage.”

The draft report was written by outside experts under contract with the EAC. The final report was entitled “Election Crimes: An Initial Review and Recommendations for Future Study” and was issued on December 7, 2006.

The EAC is an independent bipartisan commission created by the 2002 Help America Vote Act in order to disburse funds to the states for the purchase of new voting systems, certify voting technologies, develop guidelines and serve as an information resource for election administration.

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

029984



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

EAC Statement Regarding Research and Contracting Policies

Commission to Review Internal Procedures

For Immediate Release
April 11, 2007

Contact: Jeannie Layson
Bryan Whitener
(202) 566-3100

WASHINGTON – The Help America Vote Act of 2002 (HAVA) directs the Election Assistance Commission (EAC) to serve as a national clearinghouse and resource by, among other things, conducting studies with the goal of improving the administration of federal elections. To fulfill this mandate, the EAC has entered into contracts with a variety of persons and entities. Reports adopted by the EAC, a bipartisan federal entity, are likely to be cited as authoritative in public discourse. Prior to the EAC's adopting a report submitted by a contractor, the EAC has the responsibility to ensure its accuracy and to verify that conclusions are supported by the underlying research.

The Commission takes input and constructive criticism from Congress and the public very seriously. We will take a hard look at the way we do business. Specifically, we will examine both the manner in which we have awarded contracts and our decision-making process regarding the release of research and reports. The EAC takes its mandates very seriously, and we will continue to move forward in a bipartisan way to improve the way America votes.

EAC is an independent bipartisan commission created by HAVA. It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

029985

Jeannie Layson /EAC/GOV

04/11/2007 10:26 AM

To StricklerL@cbsnews.com

cc

bcc

Subject your questions

Laura,

The fraud and intimidation research contract was for \$147,106, and the voter ID and provisional voting research contract was \$560,002. Voter ID was only part of the contract. It also tasked Eagleton to provide information about provisional voting practices. In Oct. 2006, the Commission issued provisional voting best practices.

Please let me know if you need anything else, and I'll send you the statement as soon as it's ready to go.

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

029938

Jeannie Layson /EAC/GOV
04/06/2007 05:58 PM

To wendy.weiser@nyu.edu
cc
bcc
Subject FOIA letter

Ms. Weiser,

The letter is attached. The person who mailed it had already left for the day, but I will check with her first thing Monday to determine the status of the mailing. Thanks for your patience and for bringing this to my attention. Have a good weekend.



Brennan 03-27-07.doc
Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

029987



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

March 29, 2007

Ms. Wendy R. Weiser
Deputy Director, Democracy Program
Brennan Center for Justice
161 Avenue of the Americas, 12th Floor
New York, NY 10013

Dear Ms. Weiser:

This letter is in response to your Freedom of Information Act (FOIA) request received by the U.S. Election Assistance Commission (EAC) on November 13, 2006. The request sought certain agency records concerning two agency draft reports, *The Voter Fraud and Intimidation Report* and *The Voter Identification Report*. Specifically, the request sought: (1) "the report on voter identification prepared by the Eagleton Institute of Politics and the Moritz College of Law," (2) "the report on voter fraud and voter intimidation prepared by Tova Wang and Job Serebrov," (3) The voter identification and voting fraud report requests for proposals and contracts, and (4) communications relating to the above reports between the EAC and Eagleton Institute of Politics, the Moritz College of Law, Ms. Tova Wang, Mr. Job Serebrov, or other third parties.

Responsive records. On December 12, 2006, we provided a partial response to your request regarding items (1) through (3) above. In regard to item (4), copies of the responsive documents are attached (approximately 1,500 pages). Upon review of the records, you will find a few places where small portions of information have been redacted (in black). As required by FOIA exemption 6, the EAC has redacted personal information, including home addresses, telephone numbers, personal e-mail addresses, personal financial information, social security numbers, and tax identification numbers.

Withheld records. In reference to item (4) an estimated 300 pages of e-mails have been withheld because the information in these e-mails is pre-decisional and protected by the Deliberative Process Privilege for the same reasons discussed in our December 12, 2006 letter, which I have attached.

The EAC has decided to waive the processing fees for your request. If you interpret any portion of this response as an adverse action, you will have an opportunity to appeal it to the Election Assistance Commission. However, as this letter is only partially responsive to your request, please hold any appeal until your request has been fully addressed. At that time, your appeal must be in writing and sent to the address noted on the above letterhead. Any appeal submitted, must be postmarked no later than 60 calendar days from the date of EAC's final response letter.

Please include your reasons for reconsideration and attach a copy of this and subsequent EAC responses.

Sincerely,

Jeannie Layson
Director of Communications
U.S. Election Assistance Commission

Attachments:

1. Your Request Letter (dated November 8, 2006)
2. EAC's Response Letter (dated December 12, 2006)
3. Responsive Documents

Bryan Whitener /EAC/GOV
04/05/2007 08:48 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie
Layson/EAC/GOV@EAC

cc

bcc

Subject Fw: Board agenda docs

Here are the docs we sent to USA Today.

----- Forwarded by Bryan Whitener/EAC/GOV on 04/05/2007 08:42 AM -----

Bryan Whitener /EAC/GOV
09/27/2006 05:56 PM

To rwolf@usatoday.com

cc Jeannie Layson/EAC/GOV@EAC

Subject Board agenda docs

Rich,

When you get to the point you need to speak with anyone for attribution, please let me know and I'll check with our spokesperson, Jeannie Layson. As we discussed, here are the docs you asked about that were presented at the board meetings in May and links to the meeting agenda. There are two reports: (1) a draft report produced by Eagleton Institute concerning provisional voting; and (2) a status report produced by EAC contractors regarding research being conducted on voter fraud and intimidation. The reports were presented by the contractors to the Standards Board and Board of Advisors for their input. This type of input is required for any guidance issued by EAC and is desired for any product that we provide to the election community and the public. Based on the input that was received from these boards, particularly regarding the questionable information contained in Eagleton's provisional voting report, EAC has not issued the Eagleton draft report as a final EAC document. As for the voter fraud and intimidation status report, it is merely an update by EAC staff on the status of the research conducted by the EAC contractors. A report and recommendations on future actions regarding this topic will be produced after EAC review of the preliminary research.

Please do not hesitate to contact me if I can be of further assistance.

Bryan Whitener
U.S. Election Assistance Commission
(202) 566-3118
(866) 747-1471 (toll free)



VF-VI Study Status 5-17-06.pdf



PV-Standard Board 5-12-06.pdf

05/23/06 to 05/24/06 - Agenda: EAC Standards Board Meeting

05/23/06 to 05/24/06 - Agenda: EAC Board of Advisors Meeting

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029990



U.S. ELECTION ASSISTANCE COMMISSION

**Status Report on the
Voting Fraud-Voter Intimidation Research
Project**

May 17, 2006

029991

INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

Recommendations

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

INTERVIEWS

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- 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, in addition to pursuing systematic election corruption schemes, 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.
- 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.

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;

- 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.

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

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

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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

**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

030000

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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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.

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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.

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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 2004.¹ 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.²

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. . ." ³ 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.

¹The 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.

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

³ 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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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.⁴
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.⁵

⁴ 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.

⁵ 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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- Six states accounted for two-thirds of all the provisional ballots cast.⁶
- 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%.⁷
- 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.⁸

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.

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

⁷ 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.

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

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- 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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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

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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 obligation 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 protected 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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- 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.

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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.⁹ Six states accounted for two-thirds of all the provisional ballots cast.¹⁰ 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.¹¹

- 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%.¹²
- 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.¹³ 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:

⁹ 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.

¹⁰ 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.

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

¹² 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.

¹³ 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.¹⁴
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:

¹⁴ 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.¹⁵
 - 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.¹⁶ 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.¹⁷

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

¹⁶ 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.

¹⁷ 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.¹⁸
- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.¹⁹
 - 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 weeks²⁰.
 - 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 cast²¹.
 - 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."²²

Election Line reported that:

¹⁸ 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.

¹⁹ 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

²⁰ 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.

²¹ 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.

²² 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 not

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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.

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

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

The table shows that the universe of voters who could be helped by provisional voting might be 2.5 – 3 million voters. 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)²³. 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 states²⁴ 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.

²³ 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.

²⁴ 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.²⁵

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

²⁵ 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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