

Karen Lynn-Dyson, Research Director, EAC
Laiza Otero, Research Associate, EAC

11:00 – 11:55 P.M. BRIEFING: DRAFT REPORT ON VOTER FRAUD/VOTER INTIMIDATION

Presentors:

Job Serebrov, Associate, The Nixon Law Firm

Tova Wang, Democracy Fellow, The Century Foundation

EAC Resource Person: Juliet Thompson, EAC General Counsel

NOON – 1:30 P.M. JOINT LUNCHEON

EAC Activities Update

Brief Remarks by: Chairman Paul DeGregorio
Commissioner Gracia Hillman

Presentation: General Update on NIST/TGDC Activities

Introduction of Speakers: Commissioner Donetta Davidson

Presentors:

John Wack, NIST

1:40 – 2:45 P.M. DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION

Presentors:

Thomas O'Neil: Project Manager, EAC Voter I.D. Study

Edward Foley, Director, Election Law@Moritz, The Ohio State University

EAC Resource Person: Juliet Thompson-Hodkins

2:45 – 3:00 P.M. BREAK

3:00 – 5:00 P.M. STANDARDS BOARD PLENARY SESSION

Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

5:00 P.M. ADJOURN

013988

Juliet E.
Thompson-Hodgkins/EAC/G
OV

04/25/2006 10:28 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi
cc
bcc
Subject Re: BoA and Standards Board agendas

History: This message has been replied to.

I have taken a look at the agendas. My questions start with assignment as resource person. Is Peggy going to be present for the Vote Fraud and Intimidation presentation? I have not been the person refereeing between Job and Tova, nor am I up to date on what their findings and work are. If I am just there to support the meeting, that's great, but Peggy should be there to make any substantive comments. I suffer from a similar problem with regard to the Eagleton presentation (other than what I gathered from their presentation a few weeks ago).

Perhaps what I need to know is what is the "resource person" supposed to do?

As a second question, do we know whether this lunch on Tuesday is "set". The hotel contract will have to be amended to include this lunch. I don't want to move forward on setting that up if it is not approved by the two Boards or it is otherwise not going to occur.

Third issue is that last time the Standards Board wanted a parliamentarian -- not volunteering, but that should be considered in terms of how our staff is assigned.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Amie J. Sherrill/EAC/GOV



Amie J. Sherrill/EAC/GOV

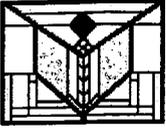
04/25/2006 03:45 PM

To jthompson@eac.gov@EAC, Karen Lynn-Dyson/EAC/GOV
cc
Subject BoA agenda



May 2006 Board of Advisors Agenda.doc
Amie J. Sherrill
Special Assistant to Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106

013987



Adam Ambrogi/EAC/GOV
04/26/2006 08:05 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC
bcc
Subject Re: BoA and Standards Board agendas

Julie, in response to your questions:

The first response is that we've placed you as a resource person for only the ID, Provisional ballot, and then your presentation on legal clearinghouse website. So that's changed. The EAC reference person is not supposed to really interact, but be able to respond to the Board if they have questions regarding EAC processes in conducting the research. The panelists should start and lead the discussion. (i.e. for the breakout sessions on VVSG, I only answered procedural questions from the crowd). The ID and PV issues are inherently legal, so we wanted you to be on hand to explain those items.

As to the second issue, I'm copying Ray, because I believe that the lunch has the Executive Board's approval to alter the contract to provide for a lunch. They had requested an earlier start that day, and this is an effort to accommodate that request. If he disagrees, then I can do what is necessary to get approval for that lunch officially.

Third issue, we may need a parliamentarian for the SB, however, that role might be filled by Bill Campbell as the new role of secretary, or as one of the other SB members appointed. Do you believe we need a line in the first plenary session to appoint the parliamentarian? Maybe Gavin's interested? Ray, any thoughts?

Thanks,
Adam

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

Juliet E. Thompson-Hodgkins/EAC/GOV

Juliet E.
Thompson-Hodgkins/EAC/GO
V
04/25/2006 10:28 PM

To Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi
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(202) 566-3100
Amie J. Sherrill/EAC/GOV

Amie J. Sherrill/EAC/GOV

04/25/2006 03:45 PM

To jthompson@eac.gov@EAC, Karen Lynn-Dyson/EAC/GOV

cc

Subject BoA agenda



May 2006 Board of Advisors Agenda.doc

Amie J. Sherrill
Special Assistant to Chairman Paul S. DeGregorio
U.S. Election Assistance Commission
1225 New York NW - Suite 1100
Washington, DC 20005
(202) 566 3106

013989

Margaret Sims /EAC/GOV
05/04/2006 02:07 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,
ddavidson@eac.gov, ghillman@eac.gov
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.
Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,
Adam Ambrogi/EAC/GOV@EAC, Elieen L.
bcc

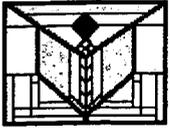
Subject Voting Fraud-Voter Intimidation Working Group Meeting

Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims
Election Research Specialist

013990



Adam Ambrogi /EAC/GOV
05/08/2006 11:44 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret cc Amie J. Sherrill/EAC/GOV@EAC

bcc

Subject Research materials for Boards

Team:

To help guide our thoughts for those of us working on the 1 PM meeting on what materials will be available for the SB/BOA meeting, I have drawn up a "comment" version of the SB agenda, which indicates, for each agenda item present, what materials will be available, and when. This is a preliminary agenda, and I realize we'll discuss these issues at the meeting today, but I thought it would be better to see this in written form, so we can identify potential problem areas. I'd like to work from this, modify this document, as we make our determinations as when, and in what form we will be providing materials to the Boards.

Again-- you all are the experts as to what stage these projects are at-- so I apologize if there's missing or incomplete information here.

Thanks,
Adam



ResearchAGENDA (Standards Board) 2006.doc

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

013981



U.S. ELECTION ASSISTANCE COMMISSION
Standards Board Meeting Agenda
Washington, D.C.
May 23 – 24, 2006

Tuesday, May 23, 2006

NOON – 1:15 P.M. LUNCHEON

Brief Welcoming Remarks
Commissioner Ray Martinez III

EAC Staff Presentations:

- Design for Democracy* (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson);
- Legal On-Line Information Clearinghouse* (Julie Thompson-Hodgkins);
- Public Access Portals* (Edgardo Cortes);
- Katrina Voting Assistance Relief* (Edgardo Cortes).

Comment [Aa1]: KLD has initial materials—need to determine what materials should/could be provided to the SB.

Comment [Aa2]: EC and JT may have initial website to present/display for SB members at meeting—unlikely to have materials ready in advance.

Comment [Aa3]: Update only, no materials.

Comment [Aa4]: Update only, no materials.

1:15 – 1:30 P.M. BREAK

1:30 – 2:30 P.M. STANDARDS BOARD PLENARY SESSION
Session Chaired by Peggy Nighswonger
Chair, Executive Board

- Appointment of Parliamentarian
- Adoption of Agenda
- Review of Meeting Book Materials
- Presentation of Proposed Permanent Bylaws
- Election of Executive Board Vacancy

2:30 – 4:00 P.M. DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING

Presenters:
Thomas O'Neill: Provisional Voting/Voter Identification Study

Comment [Aa5]: Draft available—same as last copy to 4Cs. Do not expect additional versions produced prior to the SB meeting. Can be emailed in advance.

Edward Foley: Director, Election Law@Moritz (The Ohio State University)

EAC Resource Person: Julie Thompson-Hodgkins

4:00 – 4:15 P.M. BREAK

4:15 – 5:30 P.M. DISCUSSION: DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)

Presenters:
Jennifer Collins-Foley, Pollworker Institute
Abby Horn, Cleveland State University
EAC Resource Person: Karen Lynn-Dyson

Comment [Aa6]: Preliminary draft available for both College Pgm. and Poll. Pgm. Needs additional work prior to releasing. Work might be able to be performed in the next week.

NOTE: Attendees on their own for dinner.

Wednesday, May 24, 2006

8:00 – 8:30 A.M. CONTINENTAL BREAKFAST

8:30 – 9:15 A.M. BRIEFING: PROPOSED MANAGEMENT GUIDELINES

Presenters:
Connie Schmidt, EAC Consultant
Brit Williams, EAC Consultant
EAC Resource Person: Brian Hancock

Comment [Aa7]: CS, BW and BH to meet on Wednesday to determine what of their materials may be ready for distribution. Current potentials: 3 pg. overview briefing of guideline principals, and 20 pg. chapter on security principals.

9:15 – 10:00 A.M. BRIEFING: DRAFT REPORT ON VOTE COUNT/RECOUNT

Presenters:
Dr. Thad Hall, Assistant Professor of Political Science, University of Utah
Doug Chapin, EAC Consultant
EAC Resource Person: Peggy Sims

Comment [Aa8]: Draft report completed, according to KLD, too technical at this point, but able to be released.

10:00 – 10:15 A.M. BREAK

10:30 – 11:00 A.M. DISCUSSION: DRAFT EAC ELECTION DAY SURVEY

Presenters:
Karen Lynn-Dyson, Research Director, EAC
Laiza Otero, Research Associate, EAC

Comment [Aa9]: LO and JT are currently in consultation regarding the form of the document. Will likely be ready in draft form for distribution immediately prior to SB meeting.

11:00 – 11:55 P.M. BRIEFING: DRAFT REPORT ON VOTING FRAUD/VOTER INTIMIDATION

Presenters:
Job Serebrov, Associate, The Nixon Law Firm
Tova Wang, Democracy Fellow, The Century Foundation

Comment [Aa10]: There is legal research prepared, but not compiled in a format that would be usable by SB members. Because of the close proximity to the working group meeting, final report is not yet written.

EAC Resource Person: Peggy Sims

NOON – 1:30 P.M. JOINT LUNCHEON

EAC Activities Update

Brief Remarks by: Chairman Paul DeGregorio
Vice-Chairman Ray Martinez III
Commissioner Gracia Hillman

Presentation: *General Update on NIST/TGDC Activities*

Comment [Aa11]: Allan Eustice contacted to determine what materials may be made available.

Introduction of Speaker: Commissioner Donetta Davidson

Presenters:
John Wack, NIST

1:40 – 2:45 P.M. DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION

Presenters:
Thomas O'Neill, Provisional Voting/Voter Identification Study
Edward Foley, Director, Election Law@Moritz, The Ohio State University
EAC Resource Person: Julie Thompson-Hodgkins

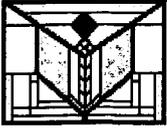
Comment [Aa12]: Draft available—same as last copy to 4Cs. Do not expect additional versions produced prior to the SB meeting. Can be emailed in advance.

2:45 – 3:00 P.M. BREAK

3:00 – 5:00 P.M. STANDARDS BOARD PLENARY SESSION
Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

5:00 P.M. ADJOURN



Adam Ambrogi /EAC/GOV
05/09/2006 12:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret cc Amie J. Sherrill/EAC/GOV@EAC

bcc

Subject Materials for Standards Board (DRAFT)

Attached, please find draft letter to be sent to the Commissioners. Any comments or corrections, please make them and send them back to Amie and myself. We hope to send this email by 3 PM today, so please take a look quickly-- for your projects.

Commissioners:

Peggy, Edgardo, Karen, Laiza, Adam and Amie met this afternoon to discuss what materials will be ready to present to the Standards Board and Board of Advisors members during the meetings later this month. Listed below is what we have determined to be available for their review and feedback. Please review this list and offer your feedback.

Also, attached is an updated SB agenda with "comments" on work product for each project to be discussed.

Design for Democracy - exhibits to be on display for board member review and feedback; Ric Grefe will be present with KLD to discuss the processes used to get to these specific examples; Preliminary Design Report (dated April 10, 2006) to be delivered electronically to the members for their review prior to the meeting

Legal Information Clearinghouse - demo version of the website will be available to show

Public Access Portals - there is a conference scheduled for June 16-18; a tentative agenda and, if desired, a list of participants will be made available to the members for their review and feedback; also future steps can also be outlined for their feedback

Katrina Voting Assistance Relief - due to the limited amount of information that we can offer, we propose eliminating this topic and substituting discussions on our Language Working Group meetings

Language Working Groups - the members will be updated on our two working group meetings and the information received at both, as well as our next steps

Provisional Voting - a draft of the final report is to be delivered to the 4 C's by 5/11 for their review and feedback; product following 4C review will be available 5/17 for electronic distribution to board members

Poll Worker R T & R (including College Pollworker) - reports as they stand now are not ready to be presented, according the KLD; Peggy and Karen to communicate to project managers the need for a report by 5/11 for review by the 4 C's

Proposed Management Guidelines - Connie, Brit, and Brian to determine on 5/10 what materials are ready for presentation to board members; currently a 3 page overview briefing of guideline principles and a 20 page chapter on security principles have been prepared

Vote Count/Recount - materials to be delivered to board members include the public testimony given by Thad Hall and Doug Chapin at our Seattle public meeting and several case studies outlining examples

EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to be presented (Ready).

013995

Voting Fraud/Voter Intimidation - a summary of the preliminary research and a recap of the discussions of the May 18 working group meeting offering brainstorming ideas, not advice

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.



Research Work Product AGENDA 2006.doc

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

013996

Margaret Sims /EAC/GOV

05/09/2006 02:48 PM

To Adam Ambrogi/EAC/GOV@EAC

cc

bcc

Subject Fw: Working Group-Perez

Adam:

J.R. Perez's resume is attached, and I have forwarded my last explanatory email to Job in answer to his concerns. I will tell Tova not to contact Ray, but that she may talk with you about this issue. Thanks! ---
Peggy



Perez bio 5_5_06.doc

----- Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 02:45 PM -----

Margaret Sims /EAC/GOV

05/09/2006 11:13 AM

To "Job Serebrov"

[REDACTED]@GSAEXTERNAL

cc wang@tcf.org

Subject Re: Working Group-Perez

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from

013997.

San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy



tx elec admin-appt-partisan restrictions.doc

"Job Serebrov" <serebrov@sbcglobal.net>



"Job Serebrov"
[Redacted]
05/08/2006 11:30 PM

To psims@eac.gov

cc

Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

013998

Margaret Sims /EAC/GOV
05/09/2006 02:51 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc Adam Ambrogi/EAC/GOV@EAC
bcc
Subject RE: Working Group-Perez

We are still on for 4 PM. Ray is out of the office due to a family emergency, so I suggest you NOT contact him. You may contact his Special Assistant, Adam Ambrogi (aambrogi@eac.gov or [REDACTED]), who also hails from Texas. --- Peggy

"Tova Wang" <wang@tcf.org>



"Tova Wang"
<wang@tcf.org>
05/09/2006 12:08 PM

To psims@eac.gov, [REDACTED]
cc
Subject RE: Working Group-Perez

We are still doing the 4 pm call, right? We can discuss it more then. Would it be OK if I see if Ray knows this person? Thanks. Tova

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

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 09, 2006 10:14 AM

[REDACTED]
Cc: wang@tcf.org
Subject: Re: Working Group-Perez

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--- Peggy

05/08/2006 11:30 PM

To psims@eac.gov
cc
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Job

014000

Margaret Sims /EAC/GOV
05/09/2006 03:38 PM

To Adam Ambrogi/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Brian
Hancock/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV@EAC, Karen
bcc
Subject Re: Materials for Standards Board (DRAFT) 

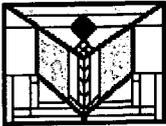
Adam:

Regarding the **Vote Count/Recount** contract, I am trying to schedule a teleconference with Thad for tomorrow. We will discuss preparations for his presentation, among other things. He may suggest additional materials, other than the testimony, that may be acceptable to us.

Regarding the **Vote Fraud/Voter Intimidation** project, I don't think the materials will include a written recap of the Working Group meeting, scheduled for May 18, if we have to have the materials to you NLT COB May 17. I can provide a verbal recap at the meeting. I may be able to pull together a written recap after May 18, but it won't be available much earlier than the week of the meetings.

Let me know if you have any questions. --- Peggy

Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV
05/09/2006 12:15 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo
Cortes/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC,
Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Margaret
Sims/EAC/GOV@EAC, Brian Hancock/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC
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014001

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Vote Count/Recount - materials to be delivered to board members include the public testimony given by Thad Hall and Doug Chapin at our Seattle public meeting and several case studies outlining examples

EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to be presented (Ready).

Voting Fraud/Voter Intimidation - a summary of the preliminary research and a recap of the discussions of the May 18 working group meeting offering brainstorming ideas, not advice

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.



Research Work Product AGENDA 2006.doc

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

014000

Karen Lynn-Dyson/EAC/GOV
05/09/2006 04:03 PM

To Adam Ambrogi/EAC/GOV@EAC
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
bcc
Subject Re: Materials for Standards Board (DRAFT) 

History:  This message has been forwarded.

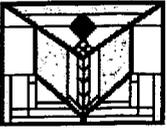
Adam-

This is fine and accurate as far as I can tell.

I assume Julie is comfortable with the fact that she is the EAC resource staff person for the Eagleton presentations.

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

014003



Adam Ambrogi/EAC/GOV
05/09/2006 05:54 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC, Karen

bcc

Subject Board Meeting Materials

Commissioners:

Peggy, Edgardo, Karen, Laiza, Adam and Amie met yesterday afternoon to discuss what materials will be ready to present to the Standards Board and Board of Advisors members during the meetings later this month. Listed below is what the Research Team has determined to be available for their review and feedback. It looks like the much of the information needed will be able to be sent to Adventure travel for their preparation in binders on May 17th.

Please review this list and offer your feedback.

Also, attached is an updated SB agenda with "comments" on work product for each project to be discussed.

Design for Democracy - exhibits to be on display for board member review and feedback; Ric Grefe will be present with KLD to discuss the processes used to get to these specific examples; Preliminary Design Report (dated April 10, 2006) to be delivered electronically to the members for their review prior to the meeting

Legal Information Clearinghouse - Information about contract, potentially a demo website to show members functionality (tentative).

Public Access Portals - there is a conference in June; a tentative agenda will be made available to the members for their review and feedback; also future steps can also be outlined for their feedback; we will include a timeline for when draft documents will be submitted so we can send them out via email for feedback before finalizing the project.

Katrina Voting Assistance Relief - due to the limited amount of information that we can offer, EC strongly proposes eliminating this topic and substituting discussions on our Language Working Group meetings
Language Working Groups - the members will be updated on our two working group meetings and the information received at both, as well as our next steps for development of programs

Provisional Voting - a draft of the final report is to be delivered to the 4 C's by 5/11 for their review and feedback; product following 4C review will be available 5/17 for electronic distribution to board members

Poll Worker R T & R (including College Pollworker) - reports as they stand now are not ready to be presented, according the KLD; Peggy and Karen to communicate to project managers the need for a report by 5/11 for review by the 4 C's

Proposed Management Guidelines - Connie, Brit, and Brian to determine on 5/10 what materials are ready for presentation to board members; currently a 3 page overview briefing of guideline principles and a 20 page chapter on "security principles" have been prepared

Vote Count/Recount - materials to be delivered to board members include the public testimony given by Thad Hall and Doug Chapin at our Seattle public meeting and several case studies outlining examples. Peggy will discuss on 5/10 with Prof. Hall regarding other materials that may be presented.

EAC Election Day Survey - draft report with changes/updates highlighted and website application clips to

014004

Karen Lynn-Dyson/EAC/GOV
05/10/2006 04:44 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL,
Adam Ambrogi/EAC/GOV@EAC

cc [REDACTED] Tim

bcc [REDACTED]

Subject RE: Travel arrangements for the EAC Board of Advisors and
Standards Board meeting

History: This message has been replied to.

Tom-

It is my understanding that Adam Ambrogi has been in touch with Ned Foley and, in turn, Dan Tokaji to indicate that you and Dan will present the information on the Voter ID project, while you and Ned will present the information on the Provisional Voting project.

Adam Ambrogi can also clarify your presentations. As I understand it, you will present your Voter ID and Provisional Voting projects to the Standards Board. You will then present your Voter ID and Provisional Voting Projects to the Board of Advisors.

I believe Adventure Travel handles hotel and travel arrangements.

I do not believe accommodations have been made for other members of the project team to attend. I will ask Adam Ambrogi, who is the principal point of contact on these meetings, to clarify this.

Regards-

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



"Tom O'Neill"

05/10/2006 10:12 AM

To klynndyson@eac.gov

cc [REDACTED]

Subject RE: Travel arrangement for the EAC Board of Advisors and
Standards Board meeting

Karen,

As we discussed last week, the Eagleton-Moritz team making the presentations at the advisory board meetings will include others in addition to Ned and me. While Ned and I will handle the briefing on the provisional voting report, the team for the briefing on the Voter ID report will include Dan Tokaji and Tim Vercellotti.

014005

be presented (Ready).

Voting Fraud/Voter Intimidation - a summary of the preliminary research and initial feedback from the May 18 working group meeting offering brainstorming ideas, not formal advice.

NIST/TGDC activities - Allan Eustis states that NIST is working to provide their summary of materials to be provided, and that they will get that to us ASAP.

Voter Identification - a PowerPoint presentation outlining the process and a summary of findings. Peer review group to occur May 11th, with final Draft due the 15th. At this time, Commissioners can determine whether Draft Report is ready to submit to the SB and BOA.



Research Work Product AGENDA 2006.doc

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

014006

Just to understand what Adventure Travel is to provide: will its services include hotel reservations and travel, or does it have a more limited mission?

Thanks,

Tom O'Neill

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

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

Sent: Tuesday, May 09, 2006 4:34 PM

To: klynndyson@eac.gov

Cc: [REDACTED] Tom O'Neill

Subject: Re: Travel arrangement for the EAC Board of Advisors and Standards Board meeting

Tom O' Neill and Ned Foley-

As you know you are scheduled to make two presentations to the EAC Board of Advisors and Standards Board on **Tuesday May 23, 2006 from 2:30-4:00 PM (on Provisional Voting)** and on **Wednesday ,May 24th from 1:40-2:45 PM (on Voter Identification)**

If you have not already done so, please make your hotel and travel arrangements through Adventure Travel, Judy Mays [REDACTED]

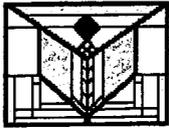
These reservations should be made no later than tomorrow COB.

Please indicate to Judy Mays that you are a contractor, who is scheduled to make a presentation at the meeting.

Thanks

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

014007



Adam Ambrogi/EAC/GOV
05/16/2006 11:47 AM

To Margaret Sims/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, ecortes@eac.gov, Karen
Lynn-Dyson/EAC/GOV@EAC, twilkey@eac.gov
bcc
Subject Re: Standards and Advisory Board Agendas

These are the only publicly released agendas yet-- The discussion, and modification that was done last week as to what products are being produced are not reflected-- but will in the final version. These were distributed because of numerous Staff questions as to time and place issues.

We'll forward around the final draft info when available.

Peggy- any word yet on what's up for Voting Fraud issue for the meeting(I know you have that WG in two days, but....)?

Thanks,
Adam

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

Margaret Sims/EAC/GOV

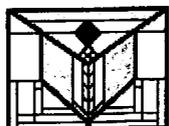
Margaret Sims/EAC/GOV
05/16/2006 11:43 AM

To Adam Ambrogi/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, twilkey@eac.gov, Karen
Lynn-Dyson/EAC/GOV@EAC, ecortes@eac.gov
Subject Re: Standards and Advisory Board Agendas

These agendas still indicate that draft reports on the Vote Count/Recount and the Voting Fraud-Voter Intimidation research projects will be presented for consideration. In neither case is this true. Reports from these projects are unavailable or not ready for prime time.

Thad Hall and Doug Chaping will have a PowerPoint presentation on the Vote Count/Recount project (and we can make copies of their testimony in Seattle available) and I will have a status report on the Voting Fraud-Voter Intimidation project for the boards. --- Peggy

Adam Ambrogi/EAC/GOV



Adam Ambrogi/EAC/GOV
05/16/2006 11:15 AM

To EAC Staff
cc
Subject Standards and Advisory Board Agendas

014008

Dear Staff

While the final version will be sent later this week, attached is the current agendas for the Standards and Advisory Boards, so the staff will know when (or if) they have to be present.

Thanks,
Adam Ambrogi



May 2006 Board of Advisors Agenda.doc AGENDA (Standards Board) 2006(WEB).doc

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

014009

**U.S. ELECTION ASSISTANCE COMMISSION
Board of Advisors Meeting Agenda
Washington, D.C.
May 23 – 24, 2006**

Tuesday, May 23, 2006

Noon – 1:15 P.M. LUNCHEON

Brief Welcoming Remarks

EAC Chairman Paul DeGregorio

Board of Advisors Chair Beverly Kaufman

EAC Staff Presentations:

Katrina Voting Assistance Relief (Edgardo Cortes);

Public Access Portals (Edgardo Cortes);

Legal On-Line Information Clearinghouse (Julie Thompson-Hodgkins);

Design for Democracy (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson)

NOTE: The EAC Standards Board will be meeting simultaneously.

1:15 – 1:30 P.M. BREAK

1:30 – 2:30 P.M. BOARD OF ADVISORS PLENARY SESSION

Session Chaired by Beverly Kaufman, Chair

- Appointment of Parliamentarian
- Call of Roll and Appointment of Proxy Committee
- Appointment of Resolutions Committee
- Review of Meeting Book Materials
- Report of Proxy Committee to establish voting strength
- Adoption of Agenda
- Adoption of Minutes of August 2005 Meeting

2:30 – 4:00 P.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)

Presenters:

Jennifer Collins-Foley, Pollworker Institute
Abby Horn, Cleveland State University
Resource Person: Karen Lynn-Dyson, EAC

4:00 – 4:15 P.M. BREAK

4:15 – 5:30 P.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON VOTE COUNT/RECOUNT

Presenters:

Dr. Thad Hall, Assistant Professor of Political Science, University of Utah
Doug Chapin, EAC Consultant
Resource Person: Julie Thompson-Hodgkins, EAC

NOTE: Attendees on their own for dinner.

Wednesday, May 24, 2006

8:00 – 8:30 A.M. CONTINENTAL BREAKFAST

8:30 – 9:15 A.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON PROVISIONAL VOTING

Presenters:

Thomas O'Neill: Project Manager, Provisional Voting / Voter Identification Research Project
Edward Foley: Director, Election Law@Moritz (The Ohio State University)
Resource Person: Julie Thompson-Hodgkins, EAC

9:15 – 10:00 A.M. BRIEFING ON PROPOSED MANAGEMENT GUIDELINES

Presenters:

Connie Schmidt, EAC Consultant
Brit Williams, EAC Consultant
Resource Person: Brian Hancock, EAC

10:00 – 10:15 A.M. BREAK

10:30 – 11:00 A.M. PRESENTATION AND CONSIDERATION OF DRAFT REPORT ON VOTING FRAUD/VOTER INTIMIDATION

Presenters:

Job Serebrov, Associate, The Nixon Law Firm

Tova Wang, Democracy Fellow, The Century Foundation
Resource Person: Juliet Thompson-Hodgkins, EAC

**11:00 – 11:55 A.M. PRESENTATION AND CONSIDERATION OF DRAFT
REPORT ON VOTER IDENTIFICATION**

Presenters:

Thomas O'Neill: Project Manager, Provisional Voting / Voter
Identification Research Project

Edward Foley, Director, Election Law@Moritz, The Ohio State
University

Resource Person: Juliet Thompson-Hodgkins, EAC

NOON – 1:30 P.M. JOINT LUNCHEON

EAC Activities Update

Brief Remarks by: Chairman Paul DeGregorio
Vice Chairman Ray Martinez, III
Commissioner Gracia Hillman

Presentation: General Update on NIST/TGDC Activities

Introduction of Speakers: Commissioner Donetta Davidson

Presentors:

John Wack, NIST

**1:40 – 2:45 P.M. PRESENTATION AND CONSIDERATION OF DRAFT EAC
ELECTION DAY SURVEY**

Presenters:

Karen Lynn-Dyson, Research Director, EAC

Laiza Otero, Research Associate, EAC

Resource Person: Brian Hancock, EAC

2:45 – 3:00 P.M. BREAK

3:00 – 5:00 P.M. BOARD OF ADVISORS PLENARY SESSION

Session Chaired by Beverly Kaufman, Chair

- Election of Officers
- Report of Resolutions Committee
Chaired by Vice Chairman Chris Thomas
- Other Business

5:00 P.M.

ADJOURN

014012

**U.S. ELECTION ASSISTANCE COMMISSION
Standards Board Meeting Agenda
Washington, D.C.
May 23 – 24, 2006**

Tuesday, May 23, 2006

NOON – 1:15 P.M. LUNCHEON

Brief Welcoming Remarks
Commissioner Ray Martinez III

EAC Staff Presentations:

Design for Democracy (improvements to ballot design, national voter registration mail-in form and polling place signage) (Karen Lynn-Dyson);

Legal On-Line Information Clearinghouse (Julie Thompson-Hodgkins);

Public Access Portals (Edgardo Cortes);

Katrina Voting Assistance Relief (Edgardo Cortes).

1:15 – 1:30 P.M. BREAK

1:30 – 2:30 P.M. STANDARDS BOARD PLENARY SESSION
Session Chaired by Peggy Nighswonger
Chair, Executive Board

- Appointment of Parliamentarian
- Adoption of Agenda
- Review of Meeting Book Materials
- Presentation of Proposed Permanent Bylaws
- Election of Executive Board Vacancy

2:30 – 4:00 P.M. DISCUSSION: DRAFT REPORT ON PROVISIONAL VOTING

Presenters:

Thomas O'Neill: Provisional Voting/Voter Identification Study

014013

Edward Foley: Director, Election Law@Moritz (The Ohio State University)

EAC Resource Person: Julie Thompson-Hodgkins

4:00 – 4:15 P.M. BREAK

4:15 – 5:30 P.M. DISCUSSION: DRAFT REPORT ON POLL WORKER RECRUITMENT, TRAINING AND RETENTION (INCLUDING COLLEGE POLL WORKERS)

Presenters:

Jennifer Collins-Foley, Pollworker Institute

Abby Horn, Cleveland State University

EAC Resource Person: Karen Lynn-Dyson

NOTE: Attendees on their own for dinner.

Wednesday, May 24, 2006

8:00 – 8:30 A.M. CONTINENTAL BREAKFAST

8:30 – 9:15 A.M. BRIEFING: PROPOSED MANAGEMENT GUIDELINES

Presenters:

Connie Schmidt, EAC Consultant

Brit Williams, EAC Consultant

EAC Resource Person: Brian Hancock

9:15 – 10:00 A.M. BRIEFING: DRAFT REPORT ON VOTE COUNT/RECOUNT

Presenters:

Dr. Thad Hall, Assistant Professor of Political Science, University of Utah

Doug Chapin, EAC Consultant

EAC Resource Person: Peggy Sims

10:00 – 10:15 A.M. BREAK

10:30 – 11:00 A.M. DISCUSSION: DRAFT EAC ELECTION DAY SURVEY

Presenters:

Karen Lynn-Dyson, Research Director, EAC

Laiza Otero, Research Associate, EAC

11:00 – 11:55 P.M. BRIEFING: DRAFT REPORT ON VOTING FRAUD/VOTER INTIMIDATION

Presenters:

Job Serebrov, Associate, The Nixon Law Firm

Tova Wang, Democracy Fellow, The Century Foundation

EAC Resource Person: Peggy Sims

NOON – 1:30 P.M. JOINT LUNCHEON

EAC Activities Update

Brief Remarks by: Chairman Paul DeGregorio
Vice-Chairman Ray Martinez III
Commissioner Gracia Hillman

Presentation: General Update on NIST/TGDC Activities

Introduction of Speaker: Commissioner Donetta Davidson

Presenters:
John Wack, NIST

1:40 – 2:45 P.M. DISCUSSION: DRAFT REPORT ON VOTER IDENTIFICATION

Presenters:
Thomas O'Neill, Provisional Voting/Voter Identification Study
Edward Foley, Director, Election Law@Moritz, The Ohio State University
EAC Resource Person: Julie Thompson-Hodgkins

2:45 – 3:00 P.M. BREAK

3:00 – 5:00 P.M. STANDARDS BOARD PLENARY SESSION
Session Chaired by Peggy Nighswonger, Chair, Executive Board

Discussion and consideration of Standards Board business.

5:00 P.M. ADJOURN

Margaret Sims /EAC/GOV
05/17/2006 01:01 PM

To Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC
cc
bcc
Subject Handouts for Board Meetings

Adam and Amie:

Attached are the status report on the Voting Fraud-Voter Intimidation research project and two versions of the PowerPoint presentation from our Vote Count/Recount contractor (one with the first slide labeled for the EAC Standards Board; the other with the first slide labeled for the Board of Advisors). --- Peggy



EAC Boards VF-VI Status Report.doc Best Practices STANDARDS.ppt Best Practices Advisors.ppt

014016

**Deliberative Process
Privilege**



U.S. ELECTION ASSISTANCE COMMISSION

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

May 17, 2006

014017

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 – including representatives from the Department of Justice (DOJ) - 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. While DOJ's Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance, the Election Crimes Branch, Public Integrity Section, has increased prosecutions of individual instances of felon, alien, and double voting at the same time as it maintains an aggressive pursuit of systematic schemes to corrupt the electoral process.
- 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, 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

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

National Counsel to the American Center for Voting Rights

Barry Weinberg

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

Department of Justice

EAC Invited Technical Advisor:

Craig Donsanto

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

Best Practices in Vote Counts, Recounts, and Challenges

**Presentation to
EAC Standards Board
May 24, 2006**



Research Team

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



Requirement for Study

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



Study Overview

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

Criteria for Studying Vote Counting and Recounting

014033



GAO Best Practice Methodology

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



Best Practice Study

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

International Principles for Vote Counting

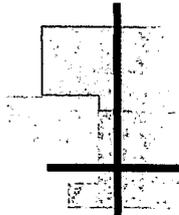
IFES, (IDEA), and the United Nations
election project states:

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



Eight Principles for Vote Counting

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



Common International Practice

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

Evaluating State Practices in Statute and Regulation

014039



Developing National Baseline

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



Developing National Baseline

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



Key Findings

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



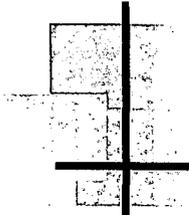
Survey Next Steps

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



Benchmarking Election Law

014044



Benchmarking

- Common in public and private sectors
- How does your performance stack up to similar organizations? OR
- How does your performance stack up to a pre-selected target?

- GOAL: Think about your practices.



Benchmarking Practices

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

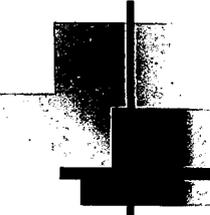
Benchmarking Example: Ballot Accounting

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



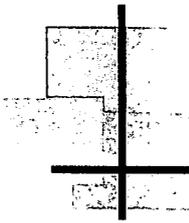
Benchmarking Limitations

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



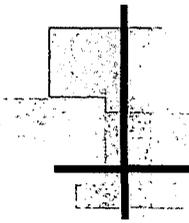
Best Practices in Election Law

014049



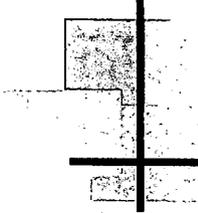
What are Best Practices

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



Effective Best Practices

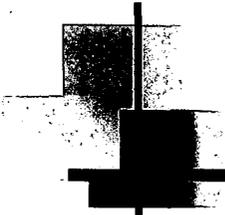
- Address a complete process
- Have been carefully charted
- Often come from organizations with similar characteristics



Best Practices Examined

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

Best Practices in Vote Counts, Recounts, and Challenges



Presentation to
EAC Board of Advisors
May 23, 2006



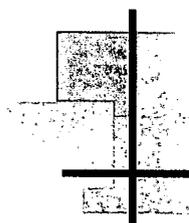
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014057



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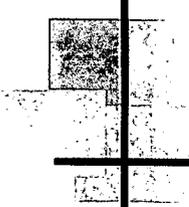
Evaluating State Practices in Statute and Regulation

014062



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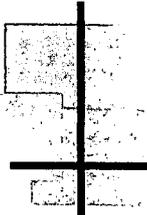
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Benchmarking Election Law

014067



Benchmarking

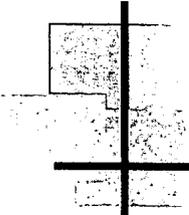
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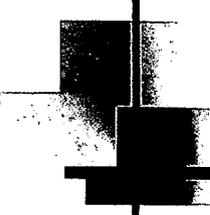
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Best Practices in Election Law

014072



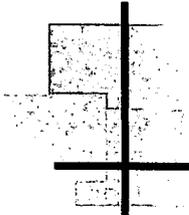
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Best Practices Examined

- What Constitutes a Vote
- Accounting
- Auditing
- Security
- Transparency

- Issues in Challenges and Recounts

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

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.
Sherrill/EAC/GOV@EAC
bcc
Subject RE: Presentations at the EAC Governing Boards

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

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

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

K

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

"Tom O'Neill" [REDACTED]



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

To klynndyson@eac.gov
cc [REDACTED],
Subject RE: Presentations at the EAC Governing Boards

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

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

Tom O'Neill

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

From: klynndyson@eac.gov [mailto:klynndyson@eac.gov]
Sent: Wednesday, May 17, 2006 12:30 PM
To: [REDACTED]
Cc: asherrill@eac.gov; aambrogi@eac.gov; jthompsonhodgkins@eac.gov
Subject: Re:Presentations at the EAC Governing Boards

014076

Tom-

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

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

EAC Standards Board (137 members)

Tuesday, May 23, 2006

2:30-4:00 PM

Hamilton Ballroom

Provisional Voting

45 minutes for presentation

45 minutes for questions and answers

Wednesday, May 24, 2006

1:40-2:45 PM

Hamilton Ballroom

Voter Identification

40 minutes for presentation

25 minutes for questions and answers

EAC Board of Advisors (36 members)

Wednesday, May 24, 2006

8:30-9:15 AM

Lafayette Park Ballroom

Provisional Voting

20 minutes for presentation

25 minutes questions and answers

Wednesday, May 24, 2006

11:00-11:55 PM

Lafayette Ballroom

Voter Identification

30 minutes presentation

25 minutes questions and answers

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

Will be in touch tomorrow after the Commissioners have met.

014077

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

014078

Karen Lynn-Dyson/EAC/GOV

05/17/2006 05:32 PM

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

cc

bcc

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

Here is the report to be included

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 05/17/2006 05:31 PM —



"Tom O'Neill"

05/12/2006 04:51 PM

To klynndyson@eac.gov

cc

Subject PV Final Draft for Review by Advisory and Standards Boards

Karen,

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

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

Thanks for your guidance.

Tom O'Neill



PVFINALDRAFT0512.doc

014079

**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

014080

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

CONTENTS

The Research Team	3
Executive Summary	5
Key Findings	6
Recommendations	9
Provisional Voting in 2004	12
Recommendations	19
Attachment 1 – Data Sources	28

FINAL DRAFT

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

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

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

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

Project Management Team

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

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

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

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

John Weingart
Associate Director
The Eagleton Institute of Politics

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

Dave Andersen
Graduate Assistant

John Harris
Graduate Assistant
The Eagleton Institute of Politics

Donald Linky
Senior Policy Fellow
The Eagleton Institute of Politics

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

Sara A. Sampson
Reference Librarian,
Moritz College of Law

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

Laura Williams
The Moritz College of Law

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Peer Review Group

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

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

John C. Harrison
Masse Professor of Law
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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.

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

EXECUTIVE SUMMARY

Background and Methodology

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

The Help America Vote Act of 2002 (HAVA, (Public Law 107-252) authorizes the EAC (SEC. 241, 42 USC 15381) to conduct periodic studies of election administration issues. The purpose of these studies is to promote methods for voting and administering elections, including provisional voting, that are convenient, accessible and easy to use; that yield accurate, secure and expeditious voting systems; that afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and that are efficient. Section 302(a) of HAVA required states to establish provisional balloting procedures by January 2004.¹ 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.

²The 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.

³The 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.