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For Review by the Standards Board and Board of Advisors

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

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

Variation within states

Within states, too, there was little consistency among different jurisdictions. Of the 20 states for which we have county-level provisional ballot data, the rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state. This suggests that additional factors (including the training of election judges or poll workers) beyond statewide factors, such as experience or the existence of voter registration databases, also influence the use of provisional ballots.

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

Resources available to administer provisional voting varied considerably among and within states. Differences in demographics and resources result in different experiences with provisional voting. For example, the Election Day Survey found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories. Small, rural jurisdictions and large, urban jurisdictions tended to report higher rates of an inadequate number of poll workers within polling places or precincts.

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

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

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

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

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- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

In precincts located in districts where many voters live in poverty and have low levels of income and education, the voting process, in general, may be managed poorly. Provisional ballots cannot be expected to work much better. In these areas, the focus should be on broader measures to improve the overall functionality of struggling voting districts, although improving the management of provisional balloting may help at the margin.

The lessons of litigation

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

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

States move to improve their processes

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

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

The wide variation in the implementation of provisional voting among and within states suggests that EAC can help states strengthen their processes. Research-based recommendations for best, or at least better, practices that draw on the experience gained in the 2004 election can be useful in states’ efforts to achieve greater consistency in the administration of provisional voting. The important effect of experience on the administration of the provisional ballot process indicates that the states have much they can learn from each other.

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SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES

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

Take a quality-improvement approach

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

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

Emphasize the importance of clarity

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

- Does the provisional voting system distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
- Do the procedural requirements of the system permit cost-efficient operation?
- How great is the variation in the use of provisional voting in counties or equivalent levels of voting jurisdiction within the state? Is the variation great enough to cause concern that the system may not be administered uniformly across the state?

Court decisions suggest areas for action

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

- Promulgate clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards.
- Provide effective materials to be used by local jurisdictions in training poll workers on such procedures as how to locate polling places for potential voters who show up at the wrong place.
- Make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office. Poll workers need appropriate training to understand their duty to give such voters a provisional ballot.

Assess each stage of the provisional voting process

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

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

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

The clarity of criteria for evaluating voter eligibility is critical to a sound process for deciding which of the cast provisional ballots should be counted.

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

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

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

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

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

Final observation

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

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Provisional Voting in 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other influences decreasing consistency among the states include:

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

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

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

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

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

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- In experienced states, the disparity was even more pronounced: 52% of provisional ballots cast were counted in states requiring in-district ballots, while 70% were counted in those allowing out-of-precinct ballots.
- If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.¹⁸
- States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.¹⁹
 - Fourteen states permitted less than one week to evaluate provisional ballots, 15 states permitted between one and two weeks, and 14 states permitted greater than two weeks²⁰.
 - Those states that permitted less than one week counted an average of 35.4% of their ballots.
 - States that permitted between one and two weeks counted 47.1%.
 - States that permitted more than 2 weeks, counted 60.8% of the provisional ballots cast²¹.
 - The effect of allowing more time for evaluation is felt most strongly in states where more than 1% of the overall turnout was of provisional ballots. In states where provisional ballots were used most heavily, those that permitted less than one week to evaluate ballots counted 58.6% while those that permitted one to two weeks counted 65.0% of ballots, and those states that permitted greater than three weeks verified the highest proportion of provisional ballots, at 73.8%.

Variation Within States

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

Election Line reported that:

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

¹⁹ See Appendix ___, Relationship Between Time Allotted to Verify Provisional Ballots and the Level of Ballots that are Verified, David Andersen, The Eagleton Institute of Politics

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

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

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

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

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

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

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

Effectiveness of Provisional Voting

The certainty of our conclusions about the effectiveness of provisional voting is limited because of the complexity of the problem and a lack of important information. An ideal assessment of how well provisional ballots worked in 2004 would require knowing the decisions of local officials in 200,000 precincts on how to inform voters about provisional voting; their performance in providing a provisional ballot to those qualified to receive one, and their decisions whether to count a provisional ballot. Information needed about the eligibility or registration status of provisional voters is also not available.

We see no automatic correlation between the quality of a state's voting system and either the number of provisional ballots cast or counted. Low numbers could reflect accurate statewide voting data and good voter education. Or they could suggest that provisional ballots were not

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made easily available. High numbers could be seen as signifying an effective provisional voting system or a weak registration process. But we do know that in 2004 provisional ballots allowed 1.2 million citizens to vote, citizens who would otherwise have been turned away from the polls.

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

Estimates of Votes Lost In 2000 Presidential Election

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

Table 1 Cal Tech – MIT Voting Technology Project Estimates

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

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

Legislative Response

Indeed, several states²⁴ came to the conclusion that the administration of their provisional voting procedures needed to be improved and amended their statutes after the 2004 election. State legislation adopted since the election points to particular areas of concern.

²³ Another interpretation of the data should be considered. The Census Bureau's Current Population Survey (CPS) developed the category of "registration mix-ups" to assess the states' registration systems. After each election the CPS asks people if they were registered and if they voted. The CPS gives breakdowns of reasons why people did not vote. Survey responders tend to deflect blame when answering questions about voting. In the narrow context of provisional ballots, 'registration problems' would cover only voters who went to the polls where the determination that they were not registered was wrong or they were registered, but in the wrong precinct. If they were in the wrong precinct, provisional voting can help them in only 17 states. In 2004, only 6.8% of those not voting and registered blamed registration problems, while 6.9% reported so in 2000.

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

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

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

Litigation

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

This litigation was significant nonetheless.

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

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

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

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determine whether these provisional ballots will be counted, in part by determining if these provisional voters already had voted an absentee ballot (in which case one ballot should be ruled ineligible, in order to avoid double voting). These decisions confirm the basic premise that provisional ballots should be available whenever voters believe they are entitled to them, so that their preferences can be recorded, with a subsequent determination whether these preferences count as valid votes.

RECOMMENDATIONS

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

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

Recommendations for Best Practices

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

Self-evaluation of Provisional Voting –4 Key Questions

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

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

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

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

Best Practices For Each Step In The Process

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

The Importance of Clarity

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

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

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

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

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

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

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

A. Registration and Pre-Election Information for Voters

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

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

B. At the Polling Place

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

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

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

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

³² The Century Foundation, *op. cit.*

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

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

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

³⁴ 2005 N.M. Laws 270 page no. 4-5.

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

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

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C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.³⁹
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.⁴⁰ While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the

³⁷ The Century Foundation, op. cit.

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

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

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

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

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

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

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

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

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

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

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

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

D. Verification of Provisional Ballots

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

E. Post-election Information for Voters

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

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

F. State Laws Governing Litigation over Provisional Voting

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

Broader Considerations

G. Integrity and the Appearance of Integrity

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

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

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma⁴³ or the Baldrige Quality process⁴⁴ to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

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

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

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

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

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ATTACHMENT 1 – Data Sources for Classification of the States

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

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

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

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

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

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

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

New vs. Old States

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

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

We included in the list of “Old States” all states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots. States in all three categories would have been familiar with key aspects of provisional voting. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they

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

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

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

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

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Statewide List of Registered Voters

The Electionline preview of the 2004 Election⁴⁶ was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases because we found it had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

Out-of-Precinct Ballots

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

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

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

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

014189

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Verification Method

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

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

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

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Data Collection

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

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

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

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

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

FINAL DRAFT

For Review by the Standards Board and Board of Advisors

Data Differences

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

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

⁵¹ Data not provided by the state itself is taken from Electionline figures.

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

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL
cc arapp@rci.rutgers.edu, davander@eden.rutgers.edu,
dlinky@rci.rutgers.edu, foley.33@osu.edu,
ireed@rutgers.edu, "Johanna Dobrich"
bcc Adam Ambrogio/EAC/GOV
Subject Re: Voter ID Report and Appendices [REDACTED]

Tom-

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

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

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

Regards-

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

"Tom O'Neill" [REDACTED]



"Tom O'Neill"
[REDACTED]
05/17/2006 09:25 AM

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

Karen,

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

Thanks for your forbearance.

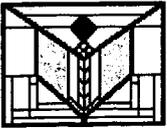
Tom O'Neill

014113



Appendices517.doc VoterIDReport05170910.doc

014114



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

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

Commissioner:

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

Let me know if you have any questions.

Best regards,
Adam



2006 Standards Board agenda.doc

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

014115



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

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

Adam,

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

Hans

aambrogi@eac.gov

05/19/2006 12:45 PM

To Hvonspakovsky@fec.gov
cc
Subject EAC Standards Board

Commissioner:

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

Let me know if you have any questions.

Best regards,
Adam

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

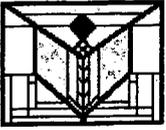
014116

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



202-566-3105 2006 Standards Board agenda.doc

014117



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

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

Theresa:

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

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

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

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

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

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

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

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

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



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

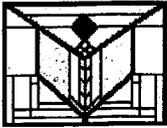
To
cc
Subject REMINDER: Congressman Jackson's show, 5/22, 2pm

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

014118

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

014119



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

To wang@tcf.org
cc
bcc
Subject FYI

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

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

Tuesday, August 15, 2006

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

Supremes Rule on Re-Redistricting of Texas

10:15 am - 11:30 am

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

Legislative Competition and the role of Gerrymandering?

11:30 am - 12:45 pm

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

Are Voters Who they Say they Are?

1:00 pm - 2:00 pm

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

Will Fall Elections Run like Clockwork?

2:00 pm - 3:00 pm

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

What's Next in Redistricting Technology

3:15 pm - 4:15 pm

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

Countdown to Census 2010

4:15 pm - 5:15 pm

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

014120

D.C.

Wednesday, August 16, 2006

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

Are 527s Here to Stay?

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

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

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

Friday, August 18, 2006

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

SPEAKERS :

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

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

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

014121



"Tova Wang"
<wang@tcf.org>
06/12/2006 05:00 PM

To aambrogi@eac.gov
cc
bcc
Subject RE: FYI

Thanks Adam. I've been trying to get Tim Storey about this, but with no luck so far. Any news with you?
Tova

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

From: aambrogi@eac.gov [mailto:aambrogi@eac.gov]
Sent: Monday, June 12, 2006 9:06 AM
To: wang@tcf.org
Subject: FYI

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

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

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014122

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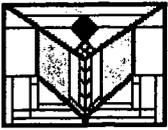
Peter Hart has been one of the country's leading public opinion analysts for more than 27 years. He conducts all public opinion polling for NBC News and The Wall Street Journal. His focus is public policy, cultural and social issues, and strategic consulting for corporations, including Time Warner, Microsoft,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

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014123

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

014124



Adam Ambrogi /EAC/GOV
06/20/2006 03:01 PM

To "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
cc
bcc
Subject State election fraud statute collection?

Dear Craig:

Hope is well with you. Hoping that you can help us out with a quick request from a member of congressional committee. They would like to know if there exists a list (compendium or index) of state election laws on crime and fraud specifically. They are trying to get access to such a list as soon as possible, for a Congressional hearing on Thursday. If no list exists to your knowledge, that's great. If it does exist, and we can get access to it, please let me know.

Thanks so much, Craig. I hope all is well.
Best,
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

014125



"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov
>

06/20/2006 05:43 PM

To aambrogi@eac.gov

cc

bcc

Subject Re: State election fraud statute collection?

I am currently in Europe on official DOJ business. Please call Nancy Simmons, 202-514-1440. We have what you request -- I think, and if we do she can e-mail it to you.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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

From: aambrogi@eac.gov <aambrogi@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Tue Jun 20 15:01:40 2006
Subject: State election fraud statute collection?

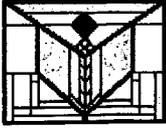
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Thanks so much, Craig. I hope all is well.
Best,
Adam

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

014126



Adam Ambrogi/EAC/GOV
06/20/2006 07:03 PM

To "Thomas Hicks" <"Hicks, Thomas"
<thomas.hicks@mail.house.gov>
cc
bcc
Subject Fw: list of state election crimes

Tom:

Doesn't look like there's a state list of fraud statutes-- there's a federal one.

(See below.)

It's something we have planned to do, but have not completed. What's your timeline and priority? I could pull something together...

AA

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

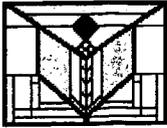
----- Original Message -----

From: "Simmons, Nancy" [Nancy.Simmons@usdoj.gov]
Sent: 06/20/2006 06:52 PM
To: Adam Ambrogi
Cc: Margaret Sims; Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
Subject: list of state election crimes

Adam, Craig thought you were looking for a list of federal statutes, which are discussed in our election fraud manual. We don't have lists of state election crimes. Craig suggests that you contact Peggy Sims at the EAC - she's a wonderful resource, and I'm including her in my reply. Good luck.

Nancy

014127



Adam Ambrogi/EAC/GOV
06/28/2006 02:11 PM

To Bryan Whitener/EAC/GOV@EAC
cc
bcc
Subject Re: Fw: MAY 23, 2006 Standards Board Meeting

Thanks! Do you or Joyce have the one from the 24th??
Thanks much,
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

Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV
06/28/2006 02:04 PM

To Adam Ambrogi/EAC/GOV@EAC
cc
Subject Fw: MAY 23, 2006 Standards Board Meeting

Adam, here's the transcript attached below.

----- Forwarded by Bryan Whitener/EAC/GOV on 06/28/2006 02:04 PM -----

Joyce Wilson /EAC/GOV
06/26/2006 04:41 PM

To Bryan Whitener/EAC/GOV@EAC
cc
Subject Fw: MAY 23, 2006 Standards Board Meeting



Joyce H. Wilson
Staff Assistant
US Election Assistance Commission
202-566-3100 (office)
202-566-3128 (fax)

----- Forwarded by Joyce Wilson/EAC/GOV on 06/26/2006 04:41 PM -----



"Carol L. Thomas Reporting"
[Redacted]
06/26/2006 03:53 PM

To jwilson@eac.gov
cc dromig@eac.gov
Subject MAY 23, 2006 Standards Board Meeting

Dear Ms. Joyce Wilson,

Attached please note the ASCII file for the Standards Board Meeting taken on Tuesday, May 23, 2006.
Your transcript has been shipped to you.

ASCII file name: 052306.txt

Please let us know if you have any questions.



Timothy Brischler, Office Manager, 703.273.9221 052306.TXT

014129

Karen Lynn-Dyson/EAC/GOV

02/18/2005 03:53 PM

To Sheila A. Banks/EAC/GOV@EAC, Holland M. Patterson/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Spring A.

cc

bcc

Subject Fw: Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Hey-

Forgot to cc you all on this.

Thanks

K

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 02/18/2005 03:50 PM -----

Karen Lynn-Dyson/EAC/GOV

02/17/2005 04:02 PM

To Gracia Hillman, Paul DeGregorio, DeForest Soaries, Ray Martinez

cc Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC

Subject Commissioner approval (by 2/25) of contracting process for work on Provisional Voting and Voter ID projects

Commissioners-

As was discussed during our session on February 17, 2005, please *review and provide your approval, disapproval or amendments* to the following items by **Friday, February, 25, 2005**:

1. The attached Scope of Work which outlines the tasks related to contract work around projects relating to voluntary guidance on provisional voting and voter identification procedures.
2. The proposal will be advertised beginning **February 28, 2005**.
3. The deadline for submitting proposals will be **March 14, 2005**.
4. Proposal review will be completed by EAC staff by **March 17, 2005**
5. Staff will recommend a contractor to the Commissioners on **March 18, 2005**.
6. Commissioners will be asked for their decisions no later than **Tuesday, March 22, 2005**

014130



Statement of Work - Provisional Voting, Voter ID.doc

Thank you for your help and attention to this matter.

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

014131

February 14, 2005

PROVIDING EAC ASSISTANCE IN DEVELOPING VOLUNTARY GUIDANCE ON PROVISIONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

0.0 Contract Title: Assistance to the U.S. Election Assistance Commission in the Development of Guidance on Provisional Voting and Voter Identification Procedures

1.0 Background: Sec. 302(a) of HAVA requires that all States allow the casting of provisional ballots in instances where a voter declares their eligibility to vote but their name does not appear on the official list of eligible voters, or an election official asserts that a voter is not eligible to vote. This section describes several requirements for implementation of provisional voting, but the States have considerable latitude in specifying how to carry out these requirements. The EAC seeks to examine how provisional voting was implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 Federal elections.

HAVA Sec. 303(b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC seeks to examine how these voter identification requirements were implemented in the 2004 general election and to prepare guidance for the States on this topic for the 2006 elections.

One of the remedies for a voter not having an acceptable proof of identity is to allow the voter to cast a provisional ballot, either at the polling place or by mail. This linkage between these two HAVA sections provides a rationale for conducting research on these topics in parallel. However, it is anticipated that two separate guidance documents will result.

2.0 Objective: The objective of this contract is for EAC to obtain assistance with the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements for the purpose of drafting guidance on these topics for promulgation to the States in time for implementation for the 2006 Federal elections. The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

3.0 Scope: In general the Contractor shall be responsible for all research and analysis activities, including the conduct of public hearings for fact finding and public comment purposes. However, in light of the urgent need to get this work underway, the EAC has scheduled a public hearing on February 23, 2005, on the topic of provisional voting.

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An initial framework for provisional voting policy has been set by the court decisions rendered on the election procedures utilized in the 2004 election. The 6th Circuit decision, in particular, has drawn some boundaries which must be given due regard in the course of considering future policy alternatives for provisional voting.

Notice of public meetings and hearings is required to be published in the Federal Register. The Contractor shall be responsible for preparing the notice documents, and the EAC will submit the notices and cover the cost of publication. In addition, draft guidance documents must be published in the Federal Register to obtain public comment prior to their adoption. Again, the Contractor will work with the EAC to prepare the draft documents for publication, which the EAC will submit and cover the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

4.0 Specific Tasks

For ease of reference, following task 4.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is understood that the work on these two topics will be conducted essentially concurrently, with Voter Identification activities starting approximately one month after Provisional Voting.

- 4.1 Prepare a project work plan. The Contractor shall prepare and deliver a brief Project Plan not later than 10 days after contract award. This plan shall describe how the Contractor will accomplish each of the project tasks, including a timeline indicating major milestones. A single document will be prepared to include both provisional voting and voter identification tasks. The Plan shall be presented at a project kickoff meeting with the EAC Project Manager.
- 4.2 Submit monthly progress reports. The Contractor shall submit a monthly progress report within 2 weeks of the end of each month. This report shall provide a brief summary of activities performed and indicate progress against the timeline provided in the Project Plan. Any issues that could adversely affect schedule should be identified for resolution. Budget status should also be provided.
- 4.3 Conduct periodic briefings for the EAC. The Contractor shall periodically meet with the EAC Project Manager and the lead Commissioner for this work to discuss research findings and progress. The Project Plan should make allowance for this activity. The number and frequency of briefings will be determined by the Contractor Project Manager and the EAC Project Manager as the work progresses. The Contractor may also be required to periodically brief the full Commission on their work.

Provisional Voting

- 4.4 Collect and analyze State legislation, administrative procedures, and court cases. An understanding of the disparities and similarities of how provisional

voting was implemented around the country will provide a baseline for the consideration of future approaches. Seventeen States never had provisional voting before HAVA was enacted, while many other States did. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.

- 4.5 Recommend alternative approaches for future implementation of provisional voting. The Contractor shall conduct a literature review to identify other research results and data available on this topic. The EAC Election Day Survey, for example, contained several questions on provisional voting. The EAC will make these survey data available to the Contractor. Based on their analysis of available research and the results of Task 4.5, the Contractor shall diagnose the problems and challenges of provisional voting implementation and hypothesize alternative approaches.

The Contractor shall assess the efficacy of these alternatives in relation to the following inter-related policy objectives: (1) enabling the maximum number of eligible voters to cast ballots that will be counted; (2) providing procedural simplicity for voters, poll workers, and election officials; (3) minimizing opportunity for voter fraud; and (4) maintaining a reasonable workload for election officials and poll workers. Additional policy considerations may be identified in the course of this research effort. The Contractor shall document and brief these alternatives to the Commission.

- 4.6 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board of Advisors meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 4.7 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.
- 4.8 Arrange one public hearing for receiving public comment on draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the meeting
- 4.9 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

Voter Identification Requirements

- 4.10 Collect and analyze State legislation, administrative procedures, and court cases. It is assumed that the collection of information for analysis of voter identification requirements will be performed concurrently with the research for Task 4.5. An understanding of the disparities and similarities of how voter identification requirements were implemented around the country will provide a baseline for the consideration of future approaches. A State-by-State compendium of the legislation, procedures, and litigation reviewed shall be delivered along with the analysis results.
- 4.11 Convene a half day public hearing on the topic of voter identification requirements. The Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC. The Contractor shall identify three panels of three to four speakers each. The Contractor shall arrange for speaker attendance to include travel and per diem expenses. The EAC will provide publicity for the hearing. The Contractor shall prepare a document summarizing the proceedings and containing all testimony provided.
- 4.12 Recommend alternative approaches for future implementation of HAVA voter identification requirements. The Contractor shall conduct a literature review to identify other research results and data available on this topic. Based on their analysis of available research and the results of Task 5.11, the Contractor shall diagnose the problems and challenges of voter identification and hypothesize alternative approaches. The Contractor shall coordinate with the EAC to identify appropriate policy objectives by which to assess these alternatives. The Contractor shall document and brief these alternatives to the Commission.
- 4.13 Prepare preliminary draft guidance document. Based on the feedback received from the Commission, the Contractor shall prepare a draft guidance document for review and comment by the EAC Board of Advisors. EAC will convene a Board meeting or teleconference for the discussion of this document. The Contractor shall provide the document in advance and participate in the Board meeting to answer questions and record comments.
- 4.14 Revise draft guidance for publication in the Federal Register. The Contractor shall revise the guidance document as appropriate to reflect the comments of the EAC and the Board of Advisors and provide the draft guidance for publication in the Federal Register by the EAC.
- 4.15 Arrange one public hearing for receiving public comment on the draft guidance. This hearing should be scheduled 30 days after the initial publication date. The Contractor shall select the location in consultation with the EAC. No speakers will be required. EAC will handle publicity for the hearing.
- 4.16 Prepare final guidance document for EAC adoption. Review all comments received in response to Federal Register publication and at public hearing and revise guidance document as appropriate. Provide final version to EAC for adoption.

Contract Type. The contract type will be Time and Materials with a ceiling of

6.0 Place of performance. The principal place of performance will be the Contractor's place of business. Meetings and occasional work efforts may be performed at the EAC offices.

7.0 Period of Performance. The period of performance is from date of award until October 28, 2005.

8.0 Schedule of Deliverables:

- Project plan – 10 days after contract award
- Progress reports – monthly
- Briefings – as required
- Analysis report on provisional voting - TBD
- Alternatives report on provisional voting – TBD
- Preliminary draft guidance on provisional voting - TBD
- Draft guidance on provisional voting for publication – 8/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on provisional voting for EAC adoption – 9/2005
- Analysis report on voter identification requirements – TBD
- Public hearing on voter identification requirements – TBD
- Summary of voter identification requirements hearing - TBD
- Alternatives report on voter identification requirements - TBD
- Preliminary draft guidance on voter identification requirements - TBD
- Draft guidance on voter identification requirements for publication – 9/2005
- Public hearing on draft guidance – 30 days after publication
- Final guidance on voter identification requirements to EAC for adoption – 10/2005

REMAINING STANDARD CONTRACT TERMS TO BE PROVIDED.

014136

Karen Lynn-Dyson/EAC/GOV
06/27/2005 05:45 PM

To "Tom O'Neill" <[REDACTED]> EXTERNAL
cc
bcc Adam Ambrogi/EAC/GOV
Subject RE: Peer Review Group [REDACTED]

Tom-

Had a very good review and discussion of the PRG at this morning's Commissioner meeting.

Also, the Commissioners have marked their calendars for a conference call with the Eagleton/Moritz team on July 12 at 9:30 AM.

Several concerns were raised about the composition of the PRG and, after some discussion, I indicated that Eagleton will provide the EAC with a revised participant list, and with a more detailed description of the PRG's mission, goals, objectives, workplan and timelines for accomplishing its work.

The Vice Chair is concerned that there is not sufficient conservative representation on the PRG. I would suggest the team do more research to identify well-recognized conservative academics to put on the Group.

Further, the Commissioners recommend a tiered process in which the PRG will prepare a "dispassionate" analysis of the issues and draw some tentative conclusions. This analysis and these conclusions will then be vetted with a defined/select group of local election officials, and then, with a defined/select group of advocacy organizations.

It was also suggested that a final round of focus group meetings be held with a cross-section of these election officials, advocates and academics for an overall interactive reaction to the analysis and recommendations.

Hope this helps clarify concerns; I look forward to sharing your revisions to the PRG with them.

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" [REDACTED]



"Tom O'Neill"
[REDACTED]
06/23/2005 02:43 PM

To klynndyson@eac.gov
cc
Subject RE: Peer Review Group

014137



EAGLETON INSTITUTE OF POLITICS

*Contract to Provide Research Assistance to The EAC
For the Development of Voluntary Guidance on
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT
JUNE 2005**

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

July 14, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

014138

**Deliberative Process
Privilege**

OUTLINE

- Introduction
- Provisional Voting
 - Task 3.4
- Voter Identification Requirements
 - Task 3.10
 - Task 3.11
- Project Management
 - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from the start of the project on May 26 through June 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The objective of the contract is to assist the EAC in the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements on which to base policy recommendations as guidance for the states in the conduct of the 2006 elections. The work has begun well, thanks to the clarity of the EAC's expectations and the strong collaboration by the scholars and staff at the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, and the Moritz College of Law at the Ohio State University.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at:

[REDACTED]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. The work plan provides for two months to complete Task 3.4. Work on this task is on schedule.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team includes faculty, an executive administrator, a reference librarian, and several research assistants. It began immediately to compile statutes, case law and administrative procedures regarding Provisional Voting. The team has created a 50 state chart to summarize information on provisional voting. Categories for which state statutes and administrative procedures are being reviewed include:

- *When did the state create a system compliant with the HAVA provisional ballot requirements?*
- *Who may be eligible to cast a provisional ballot? and*
- *What is the process for discovering whether your provisional ballot was counted in the election?*

Progress: Initial research for 27 states, including the collection of provisional voting statutes is complete. This phase of the work is on schedule for completion by August 1. By the beginning of the week of July 11, Moritz's full time research assistant will move from voter identification research to gathering and organizing case law on provisional voting.

Challenges: Identifying the relevant statutes has been challenging; states use different terminology to codify provisional voting issues. Many states have scattered election law provisions throughout their codes. This variation from state to state makes creating a snapshot view across states a challenge. The team is meeting this challenge, and the work is on schedule.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team is constructing a narrative description for each state of the 50 states and the District of Columbia. It is also surveying a stratified random sample of county election officials to improve its understanding of actual practice in administering provisional voting.

Description: To construct the narratives, a researcher is examining newspaper accounts, state websites, and reports from third-party organizations to determine what information is publicly available about these issues during the 2004 election. To organize the information derived from this examination, we are creating an information system that will make it possible to catalog the basic information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combine it with Moritz's collection and analysis of statutes, regulations and litigation. The information system will make it possible to provide answers to such topics of particular interest listed in the contract as: "How did preparation for provisional voting vary between states that had some form of provisional voting and those that did not?" and "How did litigation affect implementation?"

Progress: The researcher in this area has identified sources of information for every state and the collection process is well underway. Verified database entries for 24 states are complete, as are two state narrative summaries. This phase of the research is on schedule for completion by the end of July.

Challenges: A key challenge is determining just what states actually did in practice to verify and count provisional ballots. A second challenge has been determining the variations in policy within individual states. We are still wrestling with resolving this challenge, but the work is on schedule.

Work Plan: By the end of the July, the compilation of statutes, administrative regulations, and litigation will be complete and ready to be combined with the state-by-state narrative compiled by Eagleton. That will form the basis for the analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

SURVEY OF COUNTY ELECTION OFFICIALS

This survey will help the research team understand more about such key topics of interest as:

- "How did the experience of provisional voting vary between states that previously had some form of provisional voting and those where provisional voting was new in 2004?"
- "Did state and local processes provide for consistent counting of provisional ballots?"
- "Did local officials have a clear understanding of how to implement provisional voting?"

The survey results will supplement the information on these topics from the compilation of statutes, regulations and cases and from the narrative we are constructing for each state.

Description: The Center for Public Interest Polling (CPIP) at Eagleton is conducting a national survey of county election officials to measure several aspects of provisional voting. The survey is designed to determine the following factors related to provisional voting at the county level:

- The content and quality of instructions provided to county officials by the states
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting

Progress: The survey instrument is complete. CPIP has compiled a list of election officials at the county level and at the municipal or regional level for states that do not assign the election responsibility to counties. It was forwarded to the call center, Schulman, Ronca & Bucuvalas Inc., (SRBI) the week of July 5, 2005. A sample will be drawn the week of July 12. Human Subjects Approval from Rutgers University was granted July 12. Pre-notification letters will be sent to election officials around July 12-13, 2005. The EAC has reviewed a draft of this letter, which we have now revised to make clear that the survey will increase our understanding of the provisional voting process, but is not being conducted on behalf of the EAC.

Challenges: We made special efforts to expedite Human Subject Approval to meet the schedule in the work plan. In the absence of an existing, reliable database of local election officials, we had to create one especially for this project. In order to provide a valid comparison between the states new to provisional voting with those that previously had some form of provisional ballot we doubled the sample size from 200 to 400. This increase will require an increase in the budget for the survey from \$15,000 to about \$24,000. We intend to reallocate costs within the existing budget to make this improvement possible, and will submit a letter describing the reallocation to the EAC in mid-July.

The sample has been, and will continue to represent the biggest challenge in this survey. Compiling the sample required substantial coordination and research to determine the accuracy of the identity and contact information for potential respondents. The difficulty in determining the appropriate contact is attributed to variation in county election officials' titles, jurisdiction types, and state and county election structures across the country. In addition to the potential pitfalls of reaching the appropriate county official, another factor in actually making contact with this special population will be dependent upon the hours that they keep, and may be hindered by the summer season.

Work Plan: This questionnaire will be pre-tested by July 15, and will field July 18 through August 5, 2005. This is somewhat later than projected in the revised work plan, but the information will arrive in time to be considered in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have made substantial progress in the first two tasks, which constitute the information-gathering phase of the work on Voter ID. The research of Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: A team of Election Law@Moritz faculty, executive administrator, a reference librarian, and several research assistants is compiling statutes on Voter Identification, and providing a summarized analysis of this research.

Progress: The Moritz team has created a 50-state chart to record data on voter identification. Categories for which state statutes and administrative regulations are being reviewed include: “*Who is required to present ID*”, “*Types of ID required*”, and “*Consequences of having no ID*”. We have completed the initial research for 45 states and have collected the voter identification statutes for those states. An *Election Law@Moritz* Fellow is conducting an academic literature review on voter identification. This literature review will help shape the analytical framework that will guide us when the compendium of statutes and administrative regulations is complete.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Projections: At the current rate, a draft of the voter identification chart should be complete on schedule, by the end of July. Work on the literature review will continue into August, but will be available to inform the analysis of alternative approaches for voter identification called for by Task 3.12 of the contract.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter in the states; and second, estimating the effect on turnout of voter id requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to

monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. This work is on schedule to be completed by the end of July. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. Analysis on the county-level will enable us to estimate the influence of ID requirements on various age groups, races, ethnicities and gender groups. We are compiling data from both the 2000 and 2004 Presidential elections to measure the effect that changes in ID requirements may have had on voter turnout through two national election cycles.

Progress: The structure of the database is complete. It contains demographic information from the Census, and turnout data from various sources. The researcher assigned to this task is devising the syntax that will be required to run the statistics when the dataset is complete. The methodology for this part of the study is complete, and the actual data collection will soon be finished.

Projection: We are waiting for the Census Bureau to release the 2004 County Demographic Estimates. We have ordered and await the arrival of 2 datasets that contain voter turnout and voter registration numbers on the county-level for both the 2000 and 2004 elections. Once these two sources of information are received, the researcher will insert this information into the existing database, clean up the dataset, and begin to run the statistics. By that point, the researcher will have separated the states into various ID-requirement groupings that have been determined by the team, which will require coordination with several other parts of the study. This work is on schedule. By the end of July, the researcher should have county-level and state-level statistics on the impact of each ID system upon turnout, analyzed through various demographic features on the county-level.

Task 3.11 Public meeting on Voter Identification Requirements

Description: We are working closely with EAC staff, particularly the General Counsel, to plan a half day public meeting on Voter ID requirements. Presentations at the meeting will form an important part of the information we are compiling about Voter ID requirements and the strengths and shortcomings of a range of alternative approaches.

Progress: We have recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we have recommended that one panel include legislators on opposite sides of the issue from two different states. Our research identified Mississippi and Wisconsin as two states to focus on, and we have recommended specific legislators from each. We have discussed with staff adding a researcher to the panel to put the debate in Wisconsin and Mississippi in either a national or historic context. We also recommended two researchers from contrasting points of view, to address the effects of Voter ID provisions under HAVA and broader provisions that are now the subject of national debate. EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA. We are awaiting a decision on our recommendations from EAC staff. We have no reason not to believe that the work is on schedule to be completed in time to organize a productive meeting on July 28.

Challenges: The date and location of this hearing has been changed twice since the beginning of the project. It was originally scheduled to take place in late June, but was rescheduled for July to allow the June hearing to focus on voting machine technology. The regular meeting was rescheduled for July 26 in Minneapolis, and was recently changed to July 28 in Pasadena. The changes in the scheduling of the July meeting have complicated our choice of panelists. More seriously, the changes mean that information from the hearing will not be available as early in the research process as contemplated in the contract. This timeframe will now require the team to summarize the hearing events at the same time that we are drafting the analysis and alternatives paper in early August.

Additionally, while our contract states that the "Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC," we have been asked only to make recommendations of topics and panelists, and the arrangements for the organization of the hearing are in other hands. This lack of clarity has caused some confusion and has delayed invitations to panelists. Thanks to frequent communication with members of the EAC, the process now seems to be working smoothly.

Projection: We believe the work is on schedule for completion in time to recruit the panelists for the July 28 hearing. Preparation of the hearing summary will likely be delayed because of the need to complete the analysis and alternatives paper.

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PROJECT MANAGEMENT

Immediately after announcement of the award of the contract, Eagleton and Moritz began supplementing the core group that had prepared to proposal to building a highly qualified team to undertake the work. That team was in place by mid June, just a few weeks after the contract award.

As described in the proposal, the direction of the project is the responsibility of a five-person committee of faculty and staff from Eagleton and Moritz, chaired by Dr. Ruth Mandel, Director of the Eagleton Institute of Politics. Project Director Thomas O'Neill, a consultant to Eagleton, reports to this team and provides day-to-day guidance and coordination for the research. A weekly meeting of all the researchers engaged in the project if the primary means of coordinating the work. We have recently added an internal website to facilitate the review and revision of written materials.

Task 3.1 Update the Work Plan

The first task was completed on time with the submission of a detailed work plan and timeline. EAC staff requested that the work plan be supplemented with a Gantt chart created on MS Project, and we submitted that a few days later.

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

Progress: Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded, as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations should be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We answered with an analysis of the cost and time involved adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. We have not received response on this correspondence from the EAC, and the recruitment of the group is on hold.

Challenges: Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

Projections: We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Challenges: There are no evident challenges to this task at this time.

Projections: By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

Progress: After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28th meeting to publish the Intranet through www.intranets.com.

one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

Challenges: There are no immediate challenges to completion of this task by the timeframe specified below.

Projections: Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV
07/21/2005 01:35 PM

To "Job Serebroy"
[REDACTED] SSAEXTERNAL
cc Thomas A. Wilkey/EAC/GOV@EAC
bcc Adam Ambrogi/EAC/GOV
Subject Re: project [REDACTED]

Job-

I write to see if you might be available to come to Washington on Monday, August 1 to meet with several EAC staff and Commissioners to discuss the voter fraud/voter intimidation project and your possible work as a consultant on the project.

I'd like to schedule this 1-2 hour meeting for sometime between 1 and 3 in the afternoon.

Might you be available to come to Washington for 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

014149

Karen Lynn-Dyson/EAC/GOV
08/01/2005 06:12 PM

To "Tom O'Neill" [REDACTED]@SAEXTERNAL
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
Thompson/EAC/GOV@EAC, Adam
Ambrogi/EAC/GOV@EAC
bcc
Subject RE: Meeting with EAC [REDACTED]

Tom-

I will be in touch shortly with possible dates in very late August or early September, when EAC staff might be available to meet with Eagleton to discuss the project's research results and next steps.

In the meantime, I thought it was important to follow up on the issues Vice Chair DeGregorio raised while we were in Pasadena.

To be certain that I have the latest information, could you send to me the final list of the Eagleton/Moritz Peer Review Group and the list of organizations that Eagleton will be contacting for input?

Regards-

Karen

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

014150



EAGLETON INSTITUTE OF POLITICS

*Contract to Provide Research Assistance to The EAC
For the Development of Voluntary Guidance on
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT
JULY 2005**

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

August 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

**Deliberative Process
Privilege 014151**

OUTLINE

- Introduction
- Provisional Voting
 - Task 3.4
- Voter Identification Requirements
 - Task 3.10
 - Task 3.11
- Project Management
 - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at:

[REDACTED]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

Progress: The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

Challenges: The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: The state-by-state database is complete, as is a first draft of all state narratives. This work has been shared with the larger team and is being reviewed currently in preparation for constructing analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

Work Plan: In the next month, revisions of the narratives will be complete. In addition to this research, we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting. The survey was designed to determine the following factors related to provisional voting at the county (or equivalent election jurisdiction) level:

- The content and quality of instructions provided to county officials by the states;
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting.

Progress: The fielding and initial analysis of the survey results are complete.

Work Plan: The information derived from the survey will be considered in drafting the analysis and alternatives document required under Task 3.5.

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have completed tasks 3.10 and 3.11. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: The chart created to collect data on voter identification is complete and is now being reviewed. Voter identification statutes are being collected.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: Review of the voter identification chart, the collection of the voter identification statutes, and the writing of the state by state summaries will be completed by the end of August.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of voter ID requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern

with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. It also contains exit poll data from the 50 states, providing demographic data of voter turnout. The analysis of that data is well underway.

Challenges: The initial methodology that was devised to investigate the questions involved in this part of the study proved insufficient, as the necessary data was unobtainable (the Census Bureau has not yet released their 2004 data). After re-developing an appropriate methodology, the necessary data has been assembled, we have resumed the analysis of this data.

Projection: The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-August.

Task 3.11 Public meeting on Voter Identification Requirements

Description: In early July, we continued our efforts to identify specific Voter ID topics or issues and panelists who could shed light on them. We recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we recommended that one panel include specific legislators on opposite sides of the issue from two different states, Mississippi and Wisconsin. We also discussed adding a researcher to the panel in order to place the debate in a national or historical context. We also recommended a panel of two academic researchers with contrasting points of view, to address the effects of Voter ID provisions under HAVA. In response to our suggestions, EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA.

By mid-July, the EAC had decided which topics and speakers should be invited, however most of those speakers proved unable to attend.

Progress: Tom O'Neill and Dan Tokaji attended the EAC Public Meeting held in Pasadena on July 28. Their presentations at the meeting described the progress of the research and our developing perspective on how to assess the quality of the provisional voting process in the states and identify possible steps for improvement.

Challenges: The changes in the scheduling of the July meeting delayed and ultimately made it impossible to assemble a panel, from which we could derive substantive insight into voter identification issues as they are playing out in the states. Additionally, due to the date of the hearing, the information from the hearing was not available as early in the research process as contemplated in the contract.

Projection: Preparation of the hearing summary will likely be delayed, due to the team's focus on preparation of the analysis and alternatives paper.

PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

Progress: Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded that as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations might be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to the EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We provided an analysis of the cost and time involved in adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. In the end, the EAC determined that Eagleton should appoint a balanced Peer Review Group of its own choosing. Initial phone calls were made to all members of that group by the end of July, and written invitations and descriptions of the process have gone to all possible members who had indicated their interest in serving.

Challenges: Communications on this issue with the EAC were not clear or timely. The purpose of the PRG is to review our work, and to comment on our research design, which is well underway. We had planned to have the PRG in place early enough in the project to enable them to provide feedback, including the research design. While we are

confident in the quality of our work, the experience and perspective of the Peer Review Group will strengthen our analysis and recommendations as we find a way to receive its critique in the more limited time now available. The delay in creating the Peer Review Group will result in a delay in the completion of the final draft of the analysis and alternatives paper and in the preliminary guidance document.

Projections: The work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: The Moritz team has provided Eagleton staff with all completed work. An Eagleton staff member reviews the content and formats of data from all supporting research and will (re-)format once the work has been completed for the compendium and reports submitted to the EAC. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

Projections: By the end of July 2005, much of the above referenced research has been completed. The entire project team has begun the process of reviewing all work, and will combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

Progress: Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

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FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

014159

Karen Lynn-Dyson/EAC/GOV
08/19/2005 03:41 PM

To "Tom O'Neill" [REDACTED] RNAL
cc
bcc Adam Ambrogi/EAC/GOV
Subject Re: Peer Review Group 

Tom-

Thank you for sharing this list of your Peer Review Group members, to-date. I will share this list with the Commissioners and will be certain to let your know of their feedback, if any.

I will also be back in touch regarding Eagleton's research around voter fraud and the research project EAC will be undertaking, this fall, around voting fraud and voter intimidation. The EAC is presently in the process of finalizing a work and staff plan for this project and once it is completed, I will be certain to brief you on it.

In the meantime, EAC staff and several of the Commissioners looks forward to meeting with the Eagleton/Moritz team on September 6 at 1:30 PM.

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" [REDACTED]



"Tom O'Neill"
[REDACTED]
08/19/2005 02:20 PM

To klynndyson@eac.gov
cc
Subject Peer Review Group

Karen,

Attached is a report on the status of recruitment of members of the Peer Review Group. We extended 9 invitations. We have four confirmed members, one reluctant turn-down, one who has yet to respond to an initial inquiry, and are awaiting confirmation from 3 others who initially agreed. Please let me know if you need additional information.

Tom O'Neill



RecruitmentStatus.doc

014160

STATUS OF PEER REVIEW GROUP RECRUITMENT

(As of August 17, 2005)

R. Michael Alvarez, Ph.D. Professor of Political Science California Institute of Technology	YES/CONFIRMED
Guy-Uriel Charles Associate Professor, School of Law University of Minnesota 612-626-9154	YES*
Brad Clark Professor of Law George Washington University School of Law	NO
Pamela Susan Karlan Montgomery Professor of Public Interest Law Stanford Law School 650-725-4851	YES
Martha E. Kropf, Ph.D. Assistant Professor of Political Science University of Missouri-Kansas City 816-235-5948; KropfM@umkc.edu	YES/CONFIRMED
Daniel H. Lowenstein Professor of Law UCLA 310-825-4841	YES
John F. Manning Professor Harvard Law School	NO RESPONSE
Tim Storey Program Principal Legislative Management Program National Conference of State Legislatures	YES/CONFIRMED
Peter G. Verniero, Esq. Counsel Sills, Cummis, Epstein and Gross, PC (Former NJ Attorney General and Supreme Court Justice)	YES/CONFIRMED

014161

Attorney-Client
Privilege



"Torra, Michael"
<Michael.Torra@mail.house.gov>

09/02/2005 04:02 PM

To "aambrogi@eac.gov" <aambrogi@eac.gov>

cc

bcc

Subject Re: Fw: AZ DOJ response

I'm actually out of the office today, so let's talk more when I get back, but in answer to one of your questions -- yes, the CHC has spoken out against ID requirements in the past, especially during the HAVA debate.

Michael Torra
Office of Congressman Charles A. Gonzalez

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

From: aambrogi@eac.gov <aambrogi@eac.gov>
To: Torra, Michael <Michael.Torra@mail.house.gov>
Sent: Fri Sep 02 15:50:41 2005
Subject: Re: Fw: AZ DOJ response

Thanks-- we had, and it's good coverage. The AP had a piece as well-- this can be seen as a victory. Has the CHC come out officially on these ID issues? It is my opinion that the movements are being made in state legs. that will apply AZ type laws elsewhere. We obviously have good communications with House Admin and Senate Rules, as well as Whip Hoyer's office, but increased communications with Hill member offices would be helpful, if you have any suggestions.

AP Article:

Feds revise stance on Arizona voter ID requirement

Wednesday, August 31, 2005 7:43 PM PDT

PHOENIX (AP) - Arizona voters may be able to obtain at least a provisional ballot at polling places even if they don't show required identification despite the ID requirement in a ballot measure approved by voters last year. Whether that provisional ballot gets counted is another question.

The U.S. Justice Department in January signed off on election-law changes made by Proposition 200 itself. And a top department official in April signaled that the state would not run afoul of federal law if it put into place procedures to implement the ballot measure's voter ID mandate.

However, a different department official on Thursday wrote the state, saying it was "necessary to clarify our earlier interpretation in order to ensure an accurate representation of the Justice Department's views."

Acting Assistant Attorney General Bradley J. Schlozman's letter to a state official said the federal Help America Vote Act of 2002 requires that a person claiming to be an eligible voter and willing to sign a statement to that effect be given at least a provisional ballot.

However, HAVA leaves it up to states to decide whether a person who casts a provisional ballot is actually eligible to vote and therefore whether a provisional ballot should be counted, Schlozman wrote. Therefore, the state is free to

014162

Karen Lynn-Dyson/EAC/GOV

09/19/2005 01:05 PM

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

Subject Fw: August Progress Report - Eagleton Institute of Politics

Commissioners-

FYI-

Eagleton's August progress report.

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 09/18/2005 01:02 PM —



"Lauren Vincelli"
<Vincelli@rutgers.edu>

09/15/2005 12:04 PM

Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc [REDACTED] jobrich@eden.rutgers.edu

Subject August Progress Report - Eagleton Institute of Politics

Hi Karen,

Attached is the August progress report in fulfillment of our Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures. Please note, as per your instructions earlier this month, that the financial report will be sent via Fedex under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC. Also attached to the progress report is a finalized list of our Peer Review Group members. If you have any questions regarding this report, please contact Tom O'Neill at (908) 794-1030 or [REDACTED]

Have a great day,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane
New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551

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Progress Report_AUGUST2005_EagletonInst.pdf

014164



EAGLETON INSTITUTE OF POLITICS

*Contract to Provide Research Assistance to The EAC
For the Development of Voluntary Guidance on
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT
AUGUST 2005**

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

September 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

**Deliberative Process
Privilege 014165**

OUTLINE

- Introduction
- Provisional Voting
 - Task 3.5
- Voter Identification Requirements
 - Task 3.10
 - Task 3.11
- Project Management
 - Task 3.1
- Financial Report

INTRODUCTION

This report describes our progress from August 1 through August 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

Research on Provisional Voting and a draft of reports on the analysis and alternatives were substantially completed in preparation for the September 6 briefing for the EAC. Important reports such as the National Survey of Local Election Officials' Experience with Provisional Voting; Statistical Review Provisional Voting in the 2004 Election; State-by-state Narrative of Developments in Provisional Voting and the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states, were all completed in August.

We made further progress on recruiting a balanced and authoritative Peer Review Group (which, as this report is written, is receiving all the documents listed above for review). Ingrid Reed of Eagleton will coordinate the work of the Peer Review Group. A list of the members of the Peer Review Group is attached.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to Tom O'Neill at:

[REDACTED]

PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, and Task 3.5 is well underway.

Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of provisional voting and develop alternative means to achieve the goals of provisional voting.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and is near completion with this research.

Progress: We completed the state by state summaries of provisional voting in August. Also complete is a memorandum outlining provisional voting legislative changes since the 2004 election. This material was sent to the EAC as part of the package for briefing on September 6.

Challenges: The variety in the form and frequency of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The analysis of all the information, data, and survey results concerning provisional voting data will be completed in September, on schedule. The alternatives document should also be complete in September, pending response from the EAC on which direction those alternatives should follow.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. The report findings from the survey of 400 local election officials is now complete. The survey results improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

PROVISIONAL VOTING NARRATIVES

Description: To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

Progress: A state-by-state narrative of developments in Provisional Voting is complete and has been distributed to the EAC and the Peer Review Group. This work has been crucial to the process of constructing our draft analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

Challenges: The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent multiple revisions in order to incorporate the most up-to-date material available. Had the Election Day Study been available, this task would probably have been simplified considerably.

Work Plan: We completed revisions of the narratives.

SURVEY OF COUNTY ELECTION OFFICIALS

Description: The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting.

Progress: The analysis of the survey results and findings report are complete.

Work Plan: We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5.

014168

VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting, and is becoming the principal focus of our research.

Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

Description: The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

Progress: We are refining the 50 state (plus District of Columbia) chart of data on voter identification. So far collected are voter identification statutes for 35 states. Summaries of the existing voter identification statutes have been written for forty states.

Challenges: Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The state by state voter identification statute summaries will be completed for the remaining ten states and D.C. and the review of the chart will be completed. Analysis of voter identification data will begin.

SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern, and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with

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increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

Description: We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

Progress: The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout. The analysis of that data is underway.

Challenges: The main challenges to this task include gathering the complete set of changes to Voter ID laws over the past 5 years, and then incorporating those changes into a sound statistical methodology.

Projection: We will continue to work towards resolving the methodology issue, and ultimately produce a final report on this subject. The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-September.

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PROJECT MANAGEMENT

PEER REVIEW GROUP

Description: A feature of our proposal was the creation of a Peer Review Group (PRG). The Peer Review Group will review our research and methodology and provide valuable feedback and suggestions for the direction of our work.

Progress: The composition of the Peer Review Group has been determined and the membership has been submitted to the EAC. Additionally, as of the date of this report all PRG members have received their first mailing, which included several reports from our research, and a draft of our analysis and alternatives outline for their review.

Challenges: Our timeline for circulating and discussing our research with the PRG has been compromised due to delays in completing the recruitment of members of the group.

Projections: We are in the process of scheduling our first conference call with PRG members for the week of Sept. 19, 2005.

COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

INFORMATION SYSTEM

Description: The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

Progress: At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. As we near the end of the Provisional Voting research and move into the Voter Identification research, we will re-evaluate the volume of files contained in the Information System and update the system.

Projections: The entire project team continues to review all project drafts, and will staff members combine and format all documents and materials in preparation for our final reporting to the EAC.

INTRANET

Description: All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

Progress: Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project August 1- August 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC.

**ATTACHMENT:
PEER REVIEW GROUP
FINAL LIST (09/13/05)**

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342 Mondale Hall
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National Conference on State Legislatures
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Denver, CO 80230
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Tel: (202) 624-5400

Peter G. Verniero
Counsel
Sills, Cummins, Epstein and Gross, PC
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Newark, NJ 07102
pverniero@sillscummins.com
Tel: (973) 643-7000



"Tova Wang"
<wang@tcf.org>
10/06/2005 11:39 AM

To aambrogi@eac.gov
cc
bcc
Subject October 28 meeting

History  This message has been replied to

Hi Adam,

It was great meeting you at the UDC Law Symposium last week. I wanted to let you know that we are having a meeting about the voter fraud and intimidation meeting at 10 AM on October 28 at the EAC, and it would be great if you and Commissioner Martinez could be there. Let me know, and let's stay in touch. Thanks so much.

Tova

Tova Andrea Wang
Senior Program Officer and Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

[Click here](#) to receive our weekly e-mail updates.

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"Tova Wang"
<wang@tcf.org>
10/06/2005 12:04 PM

To aambrogi@eac.gov
cc
bcc
Subject RE: October 28 meeting

History: This message has been replied to

Adam,

Just to make sure we're talking about the same thing, I'm actually not going to be at the "kick-off" on the 14th. This is a meeting just about our project on the 28th. The project is already underway and the contracts finalized.

Since the meeting I refer to on the 28th is from 10-12, is there any possibility of the three of us having lunch after that?

Tova

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

From: aambrogi@eac.gov [mailto:aambrogi@eac.gov]
Sent: Thursday, October 06, 2005 11:01 AM
To: wang@tcf.org
Subject: Re: October 28 meeting

Tova:

I was about to email you as well. It was certainly good to meet you last week, as I've heard about your work through numerous sources, and am glad we have finally been able to chat. As with many things (we started to discuss), the EAC is doing a lot of these projects for the first time. And unlike a thinktank, or nonprofit, we are constrained in a number of ways, and there are "sensitivities" that exist. Of course, there are benefits to not being a nonprofit, as well.

I'll state that at least myself, but hopefully Cmsr. Martinez will be at the kickoff meeting. You may do this already, but I would attempt to lay out the ideal structure for your involvement in the contract, and perhaps communicate this to Karen and the other contractor immediately before the meeting. That will frame this contract structure (beyond the terms of the agreement) to your liking.

Obviously a suggestion. However, I think that the goal is good, efficient research that is unimpeachable in partisan or methodological grounds—that will then be submitted to the Commission for its approval (and actually getting its approval).

Feel free to call me anytime. If you're in DC before then, and have some time, let's get Cmsr Martinez, you and I together for lunch or coffee.

Best,
Adam

Adam D. Ambrogi

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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

"Tova Wang" <wang@tcf.org>

10/06/2005 11:39 AM

To aambrogi@eac.gov
cc
Subject October 28 meeting

Hi Adam,

It was great meeting you at the UDC Law Symposium last week. I wanted to let you know that we are having a meeting about the voter fraud and intimidation meeting at 10 AM on October 28 at the EAC, and it would be great if you and Commissioner Martinez could be there. Let me know, and let's stay in touch. Thanks so much.

Tova

Tova Andrea Wang
Senior Program Officer and Democracy Fellow
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41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

[Click here](#) to receive our weekly e-mail updates.

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Karen Lynn-Dyson/EAC/GOV

To Adam Ambrogi/EAC/GOV@EAC

cc

10/18/2005 04:36 PM

bcc

Subject Fw: Requested Documents

History  This message has been forwarded

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 10/17/2005 04:35 PM —

Karen Lynn-Dyson/EAC/GOV

To aimee sherrill

cc

10/18/2005 04:24 PM

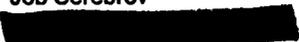
Subject Fw: Requested Documents

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 10/17/2005 04:23 PM —



"Job Serebrov"


08/19/2005 12:16 PM

To "Karen Lynn Dyson" <klynndyson@eac.gov>

cc

Subject Requested Documents

Karen:

Here are the documents that you requested.

Regards,



Job ResumeReg.doc Summary of Election Activities

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JOB SEREBROV

2110 S. Spring St.
Little Rock, AR 72206

501.324.7330 (O)

LEGAL

PRACTICE:

Law clerk to Judge Lavenski R. Smith, U.S. Court of Appeals for the Eighth Circuit; 425 West Capitol Ave., Ste. 3110, Metropolitan Bank Bldg., Little Rock, Arkansas 72201

Supervisor: Judge Lavenski R. Smith, 501.324.7310

Hours per week: 40+Dates of employment: August 2004-August 2005

Job duties: Legal research for cases assigned monthly by the judge, drafting of case memorandums and opinions, review of administrative panel and death penalty appeals and attendance at oral argument when required

Private practice of law

Supervisor: Self

Hours per week: 40+Dates of employment: April 1991 - December 1998, May 1999 - July 2004

Associate attorney, The Nixon Law Firm; 2340 Green Acres Road, Ste. 12, Fayetteville, Arkansas 72703

Supervisor: David Nixon, 479. 582.0020

Hours per week: 40+Dates of employment: December 1998-April 1999

Areas of legal practice:

- Federal and state voting issues and election law
- Federal and state civil and criminal appeals and habeas petitions
- Discovery, trial preparation, trial briefs, trial strategy
- Legislative drafting and review
- Legislative and regulatory advocacy
- Initiatives and referendums
- Administrative law
- Constitutional law
- Legal research and writing
- Election consulting for federal and state candidates
- International development projects

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**Special Law Clerk, Judge Jay Finch, Nineteenth Judicial Circuit
West, Division 3, 203 East Central, Bentonville, AR 72712**

Supervisor: Judge Jay Finch, 479.271.1020
Hours per week: varied Dates of employment: December 1998-
January 1999

Job duties: research and writing, attendance at hearings,
drafting of the opinion

BAR

ADMISSIONS:

FEDERAL

- U.S. Supreme Court
- U.S. Court of Appeals for the following circuits:
First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth,
Ninth, Tenth, D.C., and Federal
- U.S. Court of Appeals for the Armed Forces
- U.S. Court of Federal Claims
- U.S. Court of International Trade

STATE

- Supreme Court of Oklahoma (1991)
- Supreme Court of Nebraska (1992)
- Supreme Court of Arkansas (1994)

LEGAL

ASSOCIATIONS

- Oklahoma Bar Association
- Nebraska Bar Association
- Arkansas Bar Association
- Inter-American Bar Association

BAR

ACTIVITIES:

**Chairman/Founder, Appellate Practice Committee, Arkansas Bar
Association, Little Rock, Arkansas, 1993-1996**

**Member, Drafting Committee, Appeals in Arkansas, Arkansas Bar
Association, Little Rock, Arkansas, 1996**

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PUBLICATION:

- "Arkansas Appellate Motion Practice" in *Handling Appeals in Arkansas*, Arkansas Bar Association, 1996

LEGISLATIVE

EXPERIENCE:

Senior consultant, AfricaGlobal, Inc., Washington, D.C., March 2001-December 2003

- Advised on African political and economic affairs
- Served as a liaison for the company in a sugar development/refinery project in the Caprivi region of Namibia and interacted with the Office of the Namibian President and National Assembly
- Retained by the Namibian government and AfricaGlobal to draft a sugar act

Legislative Adviser to the Speaker of the Namibian National Assembly, the Director of the Namibian Election Commission, and the Vice Chancellor of the University of Namibia, January 2000-June 2002

- Reviewed Namibian Election Code and drafted memorandum with recommended improvements
- Drafted national legislation merging the independent agricultural college into the University of Namibia system
- Drafted national legislation guaranteeing voting rights to agricultural workers

Registered Election Expert with the United Nations, IFES, and the Electoral Institute of Southern Africa, 2002-present
Consultant to various members of the Arkansas General Assembly, Little Rock, Arkansas, 1994-1999

- Advised on constitutionality of proposed legislation
- Drafted legislation

Consultant to the Arkansas Court of Appeals Redistricting Commission, Little Rock, Arkansas, 1996-1998

- Drafted five redistricting bills and maps for the constitutionally required redistricting of the Court of Appeals

Member of the Committee on Department of Corrections, Murphy Commission - Restructure of Arkansas Government, Little Rock, Arkansas, 1996-1997

- Reviewed the existing structure of the state Department of Corrections
- Advised on how to streamline the department

**ADMINISTRATIVE & QUASI-JUDICIAL
EXPERIENCE:**

Commissioner, Little Rock Historic District Commission, Little Rock, Arkansas, 2005-2008

- Enforce city regulations regarding alteration to structures in the Little Rock Historic District
- Sit as an administrative tribunal for approval of petitions under the Historic Design Guidelines

Member, Board of Directors of the Arkansas Historic Museum, Little Rock, Arkansas, 2005-2006

- Approve museum operations and budget
- Attend museum functions and fund raisers

Director of International Development, Louisiana State University, 107 Hatcher Hall, Baton Rouge, Louisiana 70803

Supervisor: Dr. Stephen Lucas, 225. 578.6801

Hours per week: 40+ Dates of employment: February 2000-August 2003

Job duties:

- Interacted with U.S. and state government agencies, NGOs, foreign governments and universities, and other LSU departments and officials
 - Worked with the Louisiana congressional delegation to get a \$12.5 million international project funded in fiscal years 2002 and 2003
 - Drafted a proposal for the president of the Louisiana Chemical Association and U.S. Senator John Breaux on building a regional system to neutralize transuranic waste from nuclear power plants
- Developed, drafted, wrote grants for, and administered international research, training, education, and consulting projects, especially those dealing with democratization issues
- Drafted and negotiated international contractual agreements for research and faculty and student exchange with universities and research centers

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- Hired and supervised staff
- Drafted office budget, project budgets, and strategic plans
- Reorganized and expanded the role of the Office of International Development
- Advised the Office of International Programs and individual units on improving public relations; consulted on PR strategies

Chairman, Committee for the Revision of the Arkansas Constitution, State Political Party of Arkansas, Little Rock, Arkansas, 1995-1996

- Headed committee comprised of state legislators, attorneys, business people, and an appellate judge to review the proposed state Constitution and make recommendations

Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas

No supervisor Dates: 1990-1996

Job duties:

- Enforced election laws within the county
- Drafted administrative regulations for the commission
- Supervised the training of poll workers
- Evaluated various voting systems and purchased an optical scan system to be used countywide
- Prepared and defended annual budgets before the Washington County Quorum Court
- Sat as a member of an administrative tribunal
- Hired and supervised staff

EDUCATION:

- **Graduate Certificate, Election Governance, Griffith University, Queensland, Australia (2003)**
- **Master of Law, University of Arkansas School of Law, 204 Waterman Hall, Fayetteville, Arkansas 72701 (1993) Mini Thesis: "Water Rights in Indian Country"**
- **Juris Doctorate, Washburn University School of Law, 1700 College Ave., Topeka, Kansas 66621 (1984)**
- **Bachelor of Arts in History, Rutgers University, Administrative Services Bldg., 65 Davidson Road, Bush Campus, Piscataway, New Jersey 08854-8096 (1980)**

REFERENCES:

Judge Morris Arnold
U.S. Court of Appeals
for the Eighth Circuit
P.O. Box 2060
Little Rock, AR 72203-2060
501.324.6880

Judge Lavenski Smith
U.S. Court of Appeals
for the Eighth Circuit
425 West Capitol, Ste. 3110
Little Rock, AR 72203
501.324.7310

Brenda Turner
Chief of Staff
Office of the Governor
State Capitol Building, Suite 250
Little Rock, AR 72201
501.682.3608

Judge Herb Ashby
Former judge, Second Appellate District, Division 5
2691 Baywater Place
Thousand Oaks, CA 91362
805.493.8205

Judge Jay Finch
Nineteenth Judicial
Circuit West, Division 3
203 East Central
Bentonville, AR 72712
479.271.1020

Karen Lynn-Dyson/EAC/GOV

To Amie J. Sherrill/EAC/GOV@EAC

10/18/2005 04:38 PM

cc

bcc Adam Ambrogi/EAC/GOV

Subject Fw: Requested Documents

Aimee-

In case you couldn't open up the document which describes Job's elections background

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/17/2005 04:36 PM —



"Job Serebrov"

08/19/2005 04:14 PM

To klynndyson@eac.gov

cc

Subject Re: Requested Documents

Karen:

I enjoyed the discussion too. I really think that this project will be of national importance and can positively affect elections administration while providing an answer to the handling of the vote fraud problem for the future.

On another note, why don't you leave an evening free while I am there for dinner. I am trying to bring my wife along. If you can bring your husband it could make for an interesting evening.

Regards,

Job

Summary of Election Activities of Job Serebrov

Background to Election Problems in Arkansas

Ever since Reconstruction, Arkansas has had a history of election problems. The election fraud that gave rise to the Brooks-Baxter War in Arkansas in the 1870s involved people from both sides of the aisle voting more than once, the dead rising to cast a ballot or two, destroying ballots, creating ballots and making ballot boxes disappear. A strong one-party system

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perpetuated this tradition into modern times.

In 1995, I met with Arkansas Supreme Court Justice Tom Glaze to discuss voting issues and my efforts to clean up the electoral process. Although supportive, Justice Glaze encouraged me to proceed with caution. Before being elected to the Supreme Court, Justice Glaze had been employed in the 1960s by Gov. Win Rockefeller to clean up ballot fraud throughout Arkansas. He was nearly disbarred in the process by those involved in ballot fraud in a small, rural county.

Shortly after my discussion with Justice Glaze, I discovered how pervasive the election problems were in the state. For instance, ballot boxes were stuffed or disappeared into the night only to return altered. Contrary to state law, county sheriffs running in contested elections maintained custody of the ballot boxes. In one instance, 20 voted ballot boxes were found in the attic of a sheriff's deputy after he died.

Attorney (1991-2004)

In my private practice as an attorney, I represented numerous clients in county election contests throughout Arkansas. I also represented clients in matters before the Federal Election Commission. I have never lost an election case. Finally, I was hired as a consultant to a major nonprofit legal organization to review and summarize the 2002 amendments to federal election laws and apply the new law to 10 scenarios.

Member, Washington County Board of Election Commissioners, Fayetteville, Arkansas (1990-1996)

This board consisted of three commissioners; I was the lone Republican. We were charged with supervising the training of poll workers, evaluating voting systems and then purchasing an optical scan system to be used countywide, preparing and justifying our annual budget before the Washington County Quorum Court, hiring and supervising staff and sitting as an administrative tribunal.

When I first came on the board, Washington County was primarily a one-party county and the Democrats were used to running elections according to tradition rather than the law. I had to battle with the two Democrats on the board to enforce election laws within the county. As I started to force the issue in the courts, the Republican Party gained strength. Four years later and after outlasting eight Democrat commissioners, I was able to work with new Democrat commissioners who recognized the need to enforce the law. At this point, the commission requested that I draft administrative regulations for the board. These remain in place today.

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