Jeannie Layson /EAC/GOV
12/08/2006 10:21 AM

To twilkey@eac.gov, Bert A. Benavides/EAC/GOV@EAC
cc
bcc
Subject Brennan Center FOIA request

Just reminding you guys that I need all of Tom's emails and/or correspondence regarding the FOIA request below. I need this info by the end of the day. We interpret that this request does not cover emails or correspondence among staff--only b/w Tom and the parties mentioned below. The best and most efficient way is to print everything and bring it to me. I will review all of the documents and determine what is applicable to this request, as well as redact any information not applicable.

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

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

Gracia Hillman /EAC/GOV
12/04/2006 04:23 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc "Davidson, Donetta" <ddavidson@eac.gov>, jlayson@eac.gov, Paul DeGregorio/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC
bcc
Subject Re: Revised summaries of interviews with Donsanto and Tanner

Attached are my comments and suggested edits to this section. They should show up in green; at least that is the color on my screen.

I feel very strongly and therefore I recommend that EAC explain that it made clarifying edits to some of the text in the summaries of the DOJ interviews. The consultants provided us with lots of material and that is the only section we changed. If we don't offer a straightforward explanation, then I think we invite more problems and headaches. I offered suggested language in the attached.

DOJ Interviews.doc

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

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

Questions

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

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February 24, 2006

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

Authority and Process

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

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

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

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do with the complaint, the section errs on the side of referring it criminally to avoid having any civil litigation complicate a possible criminal case.

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

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

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

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

of the states will be helpful because at this higher level of government you find a higher level of professionalism.

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

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

Recommendations

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

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

Comment [GH2]: The consultants did not say "we contend," and I do not think EAC should put words in their mouth, so to speak.

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EAC made clarifying edits to this portion of the consultants' report.

Comment [GH3]: I feel quite strongly that EAC needs to acknowledge that it edited this portion of the consultants' report because of all the materials they submitted and that we are attaching as appendices, this is the only section we are changing.

Juliet E. Hodgkins/EAC/GOV
12/01/2006 03:23 PM

To Paul DeGregorio/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "Davidson, Donetta" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC
cc jlayson@eac.gov
bcc
Subject Revised summaries of interviews with Donsanto and Tanner

Commissioners,

Per your request, please see attached the proposed edits to the summaries of the interviews with Craig Donsanto and John Tanner.

Please get me your comments by Monday COB so that we can finalize this document in time for the meeting next week.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005

(202) 566-3100 Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

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Recommendations

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

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

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Jeannie Layson /EAC/GOV
12/01/2006 12:41 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc
bcc
Subject Re: FOIA request

Thank you. This is for the Brennan Center, so I want to do everything possible to meet their deadline.

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

Thomas R. Wilkey/EAC/GOV
12/01/2006 12:26 PM

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

Bert,
Go into my computer and look under the folder for eagleton and print out any items there and fed ex them to me so I can look at them
We also have some hard cover letters that were sent back and forth.
My password is
[redacted]
Let me know if you have a problem and Henry can reset the password
---
Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 12/01/2006 11:50 AM
To: Thomas Wilkey
Cc: Bert Benavides
Subject: FOIA request

Tom,
I know you haven't responded to my FOIA request b/c of what you've got going on, but I wanted to bring it to your attention b/c I'm pretty sure you've got some related emails. According to Karen, you and John Weingardt had email exchanges primarily after June 30. I'll need to get all of those and any letters or any other correspondence b/w the two of you. I asked for everyone to submit what they have by Monday. Perhaps Bert can begin gathering this info. See the original request below.

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

Wendy Weiser of the Brennan Center for Justice has submitted a FOIA request for the voting fraud report prepared by our consultants and the voter ID report, as well as the following information:

"In the event that the EAC denies my renewed request for the voter ID and voting fraud reports or delays another week in providing those materials, we respectfully request copies of (1) all requests for proposals and contracts relating to the voter ID and voting fraud reports; and (2) all written and electronic communications concerning the voter ID and voting fraud reports between the EAC and (a) the Eagleton Institute of Politics, (b) the Moritz College of Law, (c) Tova Wang, (d) Job Serebrov, and (e) any other individuals or entities, including but not limited to outside reviewers."

Please let me know if you would like a copy of the FOIA request.

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

Jeannie Layson /EAC/GOV To EAC Personnel
11/28/2006 10:27 AM cc
bcc
Subject FOIA Request

Hello everyone,
I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request , please reply to me with the words "no records."** If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.

I need this information and/or a response by **COB December 5, 2006**. If you cannot comply by this date, please provide notification and an estimated time when you will provide the information and the reason why you cannot comply by the original deadline. Thanks for your cooperation. See request below:

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Please let me know if you would like a copy of the FOIA request.

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

Jeannie Layson /EAC/GOV
11/15/2006 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Draft fraud and intimidation report

Here's my suggestions...

Voter Fraud & Intimidation jl edits.doc

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

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in this country.

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PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

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EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding that had to first be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

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To accomplish these tasks, EAC employed two consultants, who worked with EAC staff and interns to conduct the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topic of voter fraud and voter intimidation; (2) to develop a uniform definition of voter fraud and voter intimidation; and (3) to propose recommended strategies for researching this subject.

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EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

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The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of the Secretary of State
Member, EAC Standards Board

J.R. Perez
Guadalupe County Elections Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to national Republican campaign committees and Republican candidates

Robert Bauer
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia
National Counsel for Voter Protection, Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St Louis, Missouri
National Counsel to the American Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

Technical Advisor:
Craig Donsanto
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books.

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There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

Reports and Studies of Voter Fraud and Intimidation

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "__":

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Articles and Reports

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

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- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001

- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.

- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html

- People for the American Way, Election Protection 2004, Election Protection Coalition, at http://www.electionprotection2004.org/edaynews.htm

- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

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- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection (is this DOJ?) program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

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Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that allege suppression of the vote.

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One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan Center

William Groth
Attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite
Barnard College, Columbia University

Neil Bradley
ACLU Voting Rights Project

Nina Perales
Counsel,
Mexican American Legal Defense and Education Fund

Pat Rogers
Attorney, New Mexico

Rebecca Vigil-Giron
Secretary of State, New Mexico

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Stephen Ansolobohere
Massachusetts Institute of Technology

Chandler Davidson
Rice University

Tracey Campbell
Author, *Deliver the Vote*

Douglas Webber
Assistant Attorney General, Indiana

Heather Dawn Thompson

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Director of Government Relations,
National Congress of American Indians

Jason Torchinsky
Assistant General Counsel,
American Center for Voting Rights

Robin DeJarnette
Executive Director,
American Center for Voting Rights

Harry Van Sickle
Commissioner of Elections,
Pennsylvania

Joseph Sandler
Counsel
Democratic National Committee

John Ravitz
Executive Director
New York City Board of Elections

Sharon Priest
Former Secretary of State, Arkansas

Kevin Kennedy
Executive Director
State Board of Elections, Wisconsin

Evelyn Stratton
Justice
Supreme Court of Ohio

Tony Sirvello
Executive Director
International Association of Clerks,
Recorders, Election Officials and
Treasurers

Joseph Rich
Former Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Craig Donsanto
Director, Public Integrity Section
U.S. Department of Justice

John Tanner
Director
Voting Section, Civil Rights Division
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered and due to the stiff penalties associated with this type of fraud.

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Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

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Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states,

enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those who allege that prosecutions are not sufficiently aggressive and those who feel that the current laws are sufficient for prosecuting fraud and intimidation.

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A summary of the each of the interviews conducted is attached as Appendix "___".

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

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Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem (WHY DID IT "SEEM" THIS WAY? IS THERE EVIDENCE?) that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "___".

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

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While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes "voter fraud" and "voter intimidation." Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

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New Terminology

The phrase "voter fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

> **Fraud**, n. **1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black's Law Dictionary, Eighth Edition, p. 685.

A "voter" is a person who is eligible to and engages in the act of voting. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voter fraud," it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing "voter fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

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The phrase "voter fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voter fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

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To further complicate matters, the phrases "voter fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voter fraud" and "voter intimidation" that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

The Definition of an Election Crime for Purposes of this Study

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Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

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Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

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The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

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The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;

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- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

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Acts of Damage or Destruction

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

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Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;

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- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

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What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All crimes or civil violations related to campaign finance reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not "election crimes," and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not "election crimes."

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RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

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Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

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Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, many of the articles contained information about investigations into such activities or even charges brought. (THIS SENTENCE CONTRADICTS WHAT WAS SAID EARLIER ABOUT THE LACK OF MEDIA ARTICLES ON FOLLOW UP.) Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

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Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With " MyVote1" Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

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Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

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Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and "monitor field reports" (NOT SURE WHAT THIS MEANS) from Election Day.

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Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, pprosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of

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the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

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EAC should also conduct a survey of elections officials, district attorneys, and district election officers. (WHAT WOULD WE SURVEY THEM ABOUT?) The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

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Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

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Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the "ease of commission" (WHAT DOES THIS MEAN?) and the impact of the fraud.

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Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons actually voted.

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Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

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Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

Accepted Recommendations

There has never been a comprehensive study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a

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comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

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In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official, and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

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Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

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Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

Analyze Survey Data in Light of State Laws and Procedures

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but

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also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

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Margaret Sims /EAC/GOV
10/13/2006 04:18 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov
bcc
Subject Research Project Descriptions

Jeannie:

Here are the changes I suggested for the Vote Count-Recount and the Voting Fraud-Voter Intimidation research projects. I don't think they will help the current situation much, as the original VF-VI description already stated that it is preliminary research. As it is preliminary research, we did not expect that it would provide a total picture of voting fraud and voter intimidation in this country. We just wanted to get some sense of what is going on, and a better idea of the direction future EAC research on the subject should take. To ensure that the research would be balanced, we had consultants and project working group members from opposing sides of the political spectrum.

According to folks intimately familiar with the development of HAVA, disputes over the extent to which voting fraud and voter intimidation existed caused Congress to add the study of these subjects to EAC's list of research projects. Given the nature of the subject (most offenders try to hide their activities, sufficient evidence is hard come by with some types of activity, and prosecution of offenses may not occur for political or budgetary reasons), it is doubtful that we will ever have completely reliable statistics on occurrences of voting fraud and voter intimidation, but we may be able to obtain better statistics than anyone else has. And we should be able to identify where in the voting process most offenses tend to occur and to explore alternatives for addressing vulnerabilities that leave the process open to corruption.
--- Peggy

Rev Descriptions for Web Site Descriptions of Vote Counts- Recounts and Voting Fraud Research 9-6-06.doc

Vote Counts and Recounts

Section 241(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern recounts of ballots cast in elections for Federal office, contests of determinations regarding whether votes are counted in such elections, and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for Federal office. The law also authorizes EAC to identify best practices that are used by States for recounts and contests. Consequently, in FY 2005, EAC began conducting research to develop best practices on vote count and recount laws and procedures. A major tasks associated with this research is the review of literature for methodologies used to establish best practices and developing definitions of what constitutes a best practice with respect to vote counts, recounts, and election contests. Major tasks specifically associated with the vote count research include: (1) reviewing and analyzing data collected on definitions of what constitutes a vote for each state by voting system, including processes for handling and counting ballots, provisions for observing the count, types of accounting and auditing procedures used to ensure an accurate accounting of each ballot cast, and time periods provided between unofficial election night tallies and certification of official results; (2) drafting a comprehensive report that includes the data analysis and state-by state summary of definitions of what constitutes a vote for each voting system and the laws and procedures used to tally ballots; and (3) identifying best practices related to vote counting. Major tasks specifically associated with recount and election contest research include: (1) reviewing and analyzing states' recount and contest laws and procedures; (2) drafting a comprehensive report that includes the data analysis and the State-by-State summary of recount and contest laws and procedures; and (3) identifying best practices with respect to recounts and election contests. After conducting the research, EAC will provide election officials throughout the country with recommended best practices for vote counts recounts, and cotested elections; however, jurisdictions may not be permitted to implement these practices until their State election authority or their State legislature has determined which are appropriate to implement in the State.

Voting Fraud and Voter Intimidation

Sections 241(b)(6) and (7) allow EAC to conduct and make available to the public studies regarding nationwide statistics and methods of identifying, deterring, and investigating voting fraud in election for Federal office; and identifying, deterring, and investigating methods of voter intimidation. Building on this reference to studies of voting fraud and voting intimidation, EAC is conducting preliminary research on these issues. Activities include: (1) identifying what constitutes voting fraud and voter intimidation affecting Federal elections; (2) performing background research, including Federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identifying and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) writing a report summarizing the key findings, including suggestions for specific EAC activities to address these topics.

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Deliberative Process Privilege

Paul DeGregorio /EAC/GOV
09/28/2006 11:29 PM

To Juliet E. Thompson/EAC/GOV, Jeannie Layson/EAC/GOV
cc
bcc
Subject latest version

The version of my speech I sent earlier was not the latest one. The correct one is attached. Sorry.

Speech on Fraud intimidation Sept 29 06 Salt Lake City.doc

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Remarks by Paul DeGregorio
Chairman, US Election Assistance Commission
Voter Fraud/Intimidation Conference – Salt Lake City, Utah
Center for Public Policy & Administration
September 29, 2006

Good afternoon, ladies and gentlemen. My name is Paul DeGregorio and I am the Chairman of the U.S. Election Assistance Commission. I would like to extend my thanks to Michael Alvarez, Thad Hall and Susan Hyde for organizing this conference and for inviting me to speak with you this afternoon.

My remarks today will focus on Voter Fraud and Voter Intimidation and how HAVA and the EAC address these issues.

The subject of voter fraud and voter intimidation can be a highly contentious issue. Since the 2004 election there has been a lot of discourse and writing about what constitutes election fraud and voter intimidation and how prevalent each may be in our society. While there are no clear numbers on the incidents of voter fraud and voter intimidation, what is clear is that the many groups are concerned about both issues and it is imperative that we continue to study and address them.

As you know, the EAC was created by The Help America Vote Act or "HAVA". HAVA represents the first major piece of federal legislation on national election reforms. Among other provisions, Section 241 of HAVA requires the EAC to conduct research on election administration issues. Among the tasks the EAC is to execute is the development of nationwide statistics and

methods of identifying, deterring, and investigating voting fraud and voter intimidation in elections for Federal office.

In September of 2005 the Commission hired consultants to begin a study of voting fraud and voter intimidation. This research project is charged with the development of a clear definition of what constitutes voting fraud and voter intimidation in Federal elections; identifying current activities of key government agencies, civic advocacy groups, and other organizations regarding these topics; the establishment of a working group of experts to discuss these issues; and production of a report to the EAC summarizing the findings that includes recommendations for future research if any. Our staff is reviewing the report that was submitted to the EAC last month and we expect to share our findings in the near future.

The lack of any solid statistics regarding voter fraud and intimidation can be attributed to two major factors. First is because there is wide disagreement about the definitions for the terms "fraud" and "intimidation." Some only consider it fraud if it falls under the criminal definitions of fraud. While others consider any form of an ineligible voter attempting to vote as fraud. I have even had it suggested to me that election officials who allow voters to cast ballots on touch screen machines without a voter-verified paper trail is election fraud. If that's the case, then we have a whole lot of fraud occurring out there.

The term intimidation is also wrought with ambiguity. Some only consider it intimidation if there is a physical or mental advantage of one party over the other, while others consider any difficulty in

the voting process as being intimidation. Because of these definitional differences there has been no clear way to study the amount of fraud or intimidation because everyone is using a different definition to help shape the statistics.

Also skewing the statistics about election fraud and voter intimidation is the political agenda or bias from both sides that accompanies much of the literature about the topic. Oftentimes we see fiery rhetoric on this issue that appears to me to want to "scare" people into voting or not voting. As a result of this political bias and the ambiguity that accompanies the terms "fraud" and "intimidation," it is difficult to know when something has risen to the level to be considered fraud or simply is an accusation with no backing.

HAVA has several provisions that not only help to combat fraud but also make voting easier. Most notably section 303 of HAVA which requires each state to create "... a single, uniform, official, centralized, interactive, computerized statewide voter registration list..." This database is to be maintained at the state level and is to contain the name and registration information of every legally registered voter in the State.

The Statewide voter registration database is to serve as the single system for storing and managing the official list of registered voters throughout the state. It will be coordinated with other agencies databases within the state in order to insure the residence status of the voter.

The Statewide Voter Database serves a very important and specific function. It helps to prevent opportunities for fraud by allowing state election officials to check their registration information against the databases of other agencies in order to insure the status of the voters. Under HAVA, state election officials are given the right to remove those names that have been checked against state agency death records. Used correctly and efficiently, this would clearly help eliminate the problem of the use of a deceased person's name to vote or allow authorities to go after those who sign a dead person's name in the initiative or candidate petition process.

Also in section 303 of HAVA, State election officials are required to regularly update the registration list, removing only those individuals who are ineligible to vote in that election while updating the status of those eligible to vote. It is in this way that HAVA is helping to eliminate opportunities for fraud by eliminating ineligible voters from registration lists, while easing the process for those voters who are eligible.

One issue that has become particularly contentious is the issue of voter identification to combat voter fraud. As many of you know voter identification laws have lead to suits in Georgia, Indiana, Missouri, Ohio and Arizona with more to follow as states pass more identification laws.

In 2005-2006 the EAC commissioned research on voter identification practices in the 2004 election. To the surprise of no one the study found a lot of disagreement regarding the need for

voter identification laws and the way these laws should be applied.

Those in favor of voter identification laws argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. They propose stricter voter identification requirements to prevent one form of voter fraud -- that being multiple voting or voting by those who are not eligible.

However, opponents argue that stricter ID laws interfere with legitimate voter's access to the ballot. They fear that some voters may lack convenient access to the required ID documents. Both sides assert that their policy will engender faith in the electoral process among citizens.

At the heart of this entire debate is the balance that needs to be struck between allowing those who are eligible to vote the ability to vote while preventing those who are not eligible to vote from voting.

From my own personal experience in traveling the world to improve the election process, especially in emerging democracies in Eastern Europe, Africa and Asia, I witnessed little, if any, resistance to ID requirements, including photo ID requirements. Indeed, I believe the Carter-Baker Commission has cited this phenomenon in their recommendations on this issue. In the recent Presidential election in Haiti, which is the poorest country in the Western Hemisphere, voters were required to show a photo ID to cast ballots. Statistics provided by IFES showed that over 3 million Haitian citizens, or about 80% of the voting age population,

registered to vote at centers that took their picture and fingerprints, and that produced the ID they used on Election Day. These IDs were paid for by the Organization of American States. On Election Day, 60% of the registered Haitians went to the polls, used their IDs, and cast ballots in the presidential election. By the way the 60% turnout matched the 2004 turnout in the US presidential election.

I cite this example and the Carter-Baker study to suggest that the first step that should be taken in order to find this balance is that more research needs to be conducted on the issue of voter identification. As was noted by the EAC's research, the amount of evidence available on how voter identification laws impacted both voter turnout and voter fraud is limited, at best. As more and more states implement these laws more information needs to be gathered in order to discover if these laws are preventing fraud, and what their impact is on voter turnout.

Courts have also greatly disagreed on the impact of voter identification laws. A recent decision in Georgia granted a preliminary injunction to enjoin the State of Georgia from requiring photo identification to be able to cast a ballot in person. The court in reaching its decision concluded that the injury to a voter who couldn't get the proper identification in time to vote was great and could not be tolerated. The court did point out that a State has a legitimate and important interest in attempting to combat voter fraud and in turn ensure the integrity of its elections.

This case is a perfect example of the struggle that legislatures, election officials, and courts are having with the issue of voter

fraud and voter identification. Most, if not all, recognize voter fraud as something that compromises the integrity of elections, but to what level are we willing to burden the legitimate voter to prevent this fraud from occurring?

Voter intimidation also has little valuable statistical information available. Again this is because "voter intimidation" is difficult to define and has rarely been prosecuted.

Many of the accusations of voter intimidation are brought against poll workers, most of whom are unaware of the possible intimidation taking place. For instance many of the accusations of intimidation by poll workers stem from poll workers making improper demands for identification, or poll workers questioning voters in what is a manner perceived as aggressive or intimidating. The solution to this problem is simple, proper poll worker training. Through proper training poll workers will know when and how ID or other verification documents are to be presented and the proper way to question voters at the polls. Also revisions to challenger laws can bring about more clarity about appropriate challenges and therefore less accusations of voter intimidation.

As more statistics are kept and the form and frequency of voter intimidation is better understood, states will be better prepared to prevent instances of voter intimidation and further improve the integrity of their elections. The EAC will continue work in this area so that we can hopefully see less rhetoric and more voter participation and trust in our elections.

In order to further support local election officials in this crucial election year we have released quick start guides on new voting systems, voting system security and testing, and poll worker recruitment and training. These guides provide a snapshot of processes and procedures for local election administrators to use when implementing new voting systems and security and testing older ones. It includes tips on receiving and testing equipment, poll worker training, security issues, and Election Day operations. In 2007, as part of our Clearinghouse responsibilities, we plan to distribute more comprehensive and detailed guides on these same important subjects.

In addition to the research projects that we have begun regarding election fraud and intimidation, we have several other research and data collection projects underway that will provide election officials and the public with valuable data to be used to improve the integrity of our elections. Already underway are studies on a number of topics including effective designs for ballots, polling places and websites; best practices for poll worker training, recruitment and retention, a study on vote count and recount procedures and the 2006 Election Day survey.

The HAVA College Poll Worker Program has awarded a total of almost $1 Million in grants to help recruit a new generation of poll workers. Research is underway to find the best methods to recruit train and retain college poll workers.

We are also working hard to make sure the public is kept up to date on the future of elections and how it will affect the voting process. During tenure as Chairman we have held six public

Since I will be leaving the EAC in the not-too-distant future, I would like to take a few minutes to discuss the immense accomplishments of the EAC since I became a commissioner in December of 2003:

First, we distributed the 3 billion dollars that Congress appropriated to the states to improve their voting equipment and processes. This was truly an historic event in the field of American election administration.

Also, the EAC delivered the HAVA-mandated voluntary voting system guidelines (VVSG) within proscribed the 9-month deadline. As we develop future versions of the guidelines, we will be looking into the use of new technology and devices, as well as new software that is being created for current voting systems. Next Monday we will publish in the Federal Register the draft of our new Voting System Certification Program that we expect to finalize in December. I think you will find that this program will be a lot more rigorous and transparent than anything we have ever seen before. I encourage you to review it and give us your comments.

During the past 33 months we have issued guidance to states on statewide databases, accessibility requirements and how to use HAVA funds. And our new Inspector General and his staff are working vigorously to audit and account for the funds we distributed. On a daily basis we answer questions and offer guidance for election officials throughout the USA and indeed from all over the world.

meetings throughout the country. The topics that we have covered in these meetings include: How voting systems are certified, The National Voter Registration Act, Vote Count and Recount Procedures, Poll Workers, Effective management guidelines for voting systems, effective ballot and polling place designs, better ways to serve military and other overseas voters, voter information websites, and the EAC voting system certification program. As you can see, with a staff of just 23 people--and that number includes the Commissioners--we have accomplished a great deal in our short period of existence.

Twenty one years ago, I was probably the only one in this room who was heavily engaged as a professional election administrator. I have seen a lot of change since that time and no more so than in the past 5 years. Since the passage of HAVA, the nation has experienced significant changes in the electoral process. New voting systems have been purchased, replacing the antiquated systems that had been in place for decades. New statewide databases are in place. No one should be turned away at the polls anymore as provisional voting is the law of the land. Disabled voters, elderly voters and voter with language barriers have new tools that make it easier for them to cast their ballot.

Is America better off for all this change? You bet we are.
Is the system perfect and free from errors, flaws, fraud and intimation? Certainly not.

On November 7th, can voters have full trust and confidence in the election results that come out of all of these new devices, laws and procedures? In my view, they certainly can.

It's been an honor for me to have served at this historic time on this small but remarkable federal agency that touches the lives of every American. During my time on the commission, I have come to know many of you and of your deep conviction to help American improve and strengthen our system of democracy. And I want to thank you for your work and for the strong support you have given me and the commission since our start a mere 3 years ago.

You may know that during the 10 years preceding my appointment to the EAC, I worked as hard as I could to improve the election process in many emerging democracies throughout the globe. Whether it was in Congo or Cambodia, Russia or Romania, Slovakia or Sierra Leone, those 10 years were truly a wonderful opportunity that allowed me to touch the hearts and minds of many peoples, and experience firsthand the many similarities and few differences we actually have among each other in this world. I will be forever grateful to President George W. Bush for giving me the opportunity to do and experience the exact same thing in the United States of America while on the EAC. Thank you.

014839

Margaret Sims /EAC/GOV
06/27/2006 12:12 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject U.S. News & World Report

History: This message has been replied to.

Jeannie

We suspect that someone from the Voting Fraud-Voter Intimidation Project Working Group has been talking to reporters, tipping them off about what we are finding in our preliminary study, and referring them to our consultants (although the information could have come from anyone on the EAC boards, too). Apparently, the U.S. News & World Report reporter who contacted me also contacted both consultants working on the project.

Based on my recommendation, Tova Wang and, possibly, Job Serebrov, who are on EAC personal services contracts for our voting fraud and voter intimidation research, will seek further clarification from you about what they can and cannot say to reporters and in public fora about vote fraud and voter intimidation and about EAC's research. I have previously advised Tova and Job not to discuss the work they are doing for us as this is EAC research, the Commissioners have not yet received and accepted the final report, and the Commission has not approved their speaking about the EAC research.

Tova plans to call you tomorrow (Tuesday, June 27) about the issue. In addition to the reporter's inquiry, she has been invited to speak on the subject at the summer conference of the National Association of State Legislatures. She has plenty of knowledge of the subject in her own right (apart from our study), but is having trouble differentiating between her own work and the work she is doing for us. Please, just let me know what you advise her to do.

--- Peggy

Margaret Sims /EAC/GOV
05/24/2006 03:17 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov
bcc
Subject Re: press interview

Thanks for the "heads up". --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/24/2006 02:52 PM

To psims@eac.gov
cc
Subject press interview

Hi Peg,

Just wanted to give you the heads up that I did an interview with a reporter from The Hill today on fraud. As far as I know he is simply referring to me as a fellow at TCF and I did not discuss the project in any way

Tova Andrea Wang
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.

Jeannie Layson /EAC/GOV
11/21/2005 02:17 PM

To Margaret Sims/EAC/GOV@EAC
cc
bcc
Subject Re: Chair Ltr to Donsanto-DOJ

Peg,
My suggested edits are attached.

Chair Ltr to Donsanto-DRAFT jl edits.doc

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

Gracia Hillman /EAC/GOV
10/30/2006 01:48 PM

To Thomas R. Wilkey/EAC/GOV@EAC
cc pdegregorio@eac.gov, Ddavidson@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov
bcc
Subject The "Fraud/Intimidation" Report

Tom:

In light of your announcement this morning about Peg's continued illness, I am asking who has taken the responsibility to complete EAC internal review of the information that was submitted to us by the consultants and what is the timeline for completion of that review?

I am taking far too much criticism on this to just idly sit by saying "I don't know" when EAC will release the information.

Thank you,
Gracia

Jeannie Layson /EAC/GOV
10/27/2006 12:25 PM

To jthompson@eac.gov, ggilmour@eac.gov
cc
bcc
Subject Fw: FOIA Request

Here we go...
---- Forwarded by Jeannie Layson/EAC/GOV on 10/27/2006 12:25 PM ----

"Judith Schaeffer "
<jschaeffer@pfaw.org>
10/27/2006 12:15 PM

To jlayson@eac.gov
cc bwhitener@eac.gov
Subject FOIA Request

Dear Ms. Layson:

Attached is a FOIA request from People For the American Way that we have also sent to you today by fax. Please do not hesitate to call me if you have any questions. Thank you in advance for your assistance and cooperation.

Sincerely,

Judith E. Schaeffer
Deputy Legal Director
People For the American Way
jschaeffer@pfaw.org
202-467-2381 (ph.)
202-293-2672 (fax)

Letter from EAC Oct. 19.pdf

EAC FOIA.doc

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

October 19, 2006

Ralph G. Neas
President, People for the American Way Foundation
2000 M Street, NW
Suite 400
Washington, DC 20036

Via Facsimile Transmission ONLY
202-293-2672

RE: October 18, 2006 Letter

Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

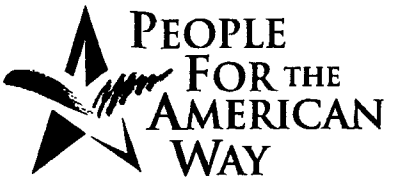
Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul DeGregorio

Paul S. DeGregorio
Chairman

Tel: (202) 566-3100 www.eac.gov Fax: (202) 566-3189
Toll free: 1 (866) 747-1471



October 27, 2006

Via email and fax

Jeannie Layson
Director of Communications
United States Election Assistance Commission
1225 New York Avenue N.W.
Suite 1100
Washington, DC 20005

Re: FOIA Request

Dear Ms. Layson:

In accordance with the Freedom of Information Act, 5 U.S.C. § 552, I am writing on behalf of People For the American Way to request a copy of a study concerning voter fraud conducted by Tova Wang and Job Serebrov and presented to the EAC in report form sometime subsequent to May 2006.

As you may know, I wrote to the EAC on October 18, 2006 on behalf of People For the American Way Foundation, asking for a copy of the report of this study. On October 19, I received a letter from Paul S. DeGregorio, Chair of the EAC, denying the request. (A copy of Mr. DeGregorio's letter is attached.) According to Mr. DeGregorio, the report was a "draft" and would not be released. However, as even Mr. DeGregorio's letter underscores, the report we are seeking is not a "draft" but rather the *authors'* report of their study of voter fraud. That the Commission may, in the words of Mr. DeGregorio, "release a final report from this study" does not make the study itself a draft. In any event, the Commission should not, and in our view cannot, withhold from public disclosure this important study, which was funded by federal taxpayers.

In accordance with FOIA, I would appreciate your furnishing the requested report to us at your earliest convenience, and no later than 20 working days from today. If you deny this request in whole or in part, please cite the specific exemption(s) that you maintain allows the Commission to withhold the release of this report in whole or in part, and, as also required by law, please release any segregable portion of the report that remains after the exempted material has been deleted. We are willing to pay the statutory fee for the copying of this report.

014846

2000 M Street, NW ♦ Suite 400 ♦ Washington, DC 20036
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

Please do not hesitate to call our Deputy Legal Director, Judith E. Schaeffer, if you have any questions about this request. Thank you in advance for your assistance and cooperation.

Sincerely,

Ralph G. Neas
President

Encl.

"chandler davidson"
<fcd@rice.edu>
04/10/2007 03:28 PM

To ghillman@eac.gov
cc
bcc
Subject Re: Eagleton Study

Gracia,

I have given the Eagleton Voter ID study a quick read.

Here are my comments (numbers refer to page numbers):

3. Of the scholars involved, the ones I know are very well respected by their peers.

4. Of the peer review group, the ones I know are also respected and represent quite different positions on the political spectrum.

6. A good statement of the tentative nature of their findings, after having clearly stated the two points of view at issue.

6-7. Limitations of model made clear.
10-11. Findings-and their tentative nature--elaborated on.

10-12. Ideas for further research are excellent.

13-15. The summary of research on determinants of turnout includes the major studies by the top-ranked people in this subspecialty within political science.

Remainder of paper: Analysis sound and straightforward, with appropriate caveats entered. The writing, by the way, is lucid and easy to grasp by the educated lay person--something that cannot be said for many reports of this kind in government documents and academic journals!

In short, my reading of this paper leads me to believe its findings are carefully stated and fully justified, with the appropriate caveats regarding interpretation. I would be surprised if this paper, had it been submitted to a top-ranked, peer-reviewed political science journal, perhaps in abbreviated form, were not accepted for publication.

Cordially,

Chandler

> Thanks. Please note that Eagleton did 2 studies for us (under one contract). One on Provisional Voting and one on Voter ID.
>
> It is the Voter I D study that I'd appreciate you taking a look at.
>
> Many thanks again.
> ---
> Sent from my BlackBerry Wireless Handheld

U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

May 24, 2005

Mr. Keith Osterhage, Director
Office of Research and Sponsored Programs
Rutgers, The State University of New Jersey
3 Rutgers Plaza
New Brunswick, New Jersey 08901

Dear Mr. Osterhage:

Enclosed is a signed contract in the amount of $560,002.00 for the provision of research assistance to the U.S. Election Assistance Commission (EAC) for the development of voluntary guidance on provisional voting and voter identification procedures. The EAC has accepted the basic proposal submitted by the Eagleton Institute of Politics and has also elected to include the optional survey of local election officials. This proposal was evaluated as providing the best value to the government through a competitive source selection process. The proposal is incorporated by reference into the contract.

The U.S. Election Assistance Commission (EAC) was created by the Help America Vote Act of 2002 (HAVA) and is charged with assisting the States in meeting the election reform requirements mandated by this legislation. One of the EAC's principal tasks is to provide guidance to the States on the interpretation of HAVA and its requirements. The provisional voting and voter identification effort that will be supported by this contract is a major element of EAC's Fiscal Year 2005 research agenda. The objective of this work is to develop guidance on these topics that States can utilize in the 2006 election cycle.

To acknowledge your receipt and acceptance of this contract, please countersign and date below and return one copy of this letter to the attention of Carol A. Paquette, Interim Executive Director.

We look forward to working with Rutgers University and the Eagleton Institute on this very important research effort.

Sincerely,

Gracia M. Hillman

Gracia Hillman, Chair

_____

Keith Osterhage
Rutgers, The State University of New Jersey

May 24, 2005

CONTRACT TO PROVIDE RESEARCH ASSISTANCE TO THE EAC FOR THE DEVELOPMENT OF VOLUNTARY GUIDANCE ON PROVISIONAL VOTING AND VOTER IDENTIFICATION PROCEDURES

0.0 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 elections and to prepare guidance 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.

1.0 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 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.

2.0 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 need to get started on this work, the EAC conducted a public hearing on provisional voting on February 23, 2005.

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 pay for the cost of publication. Comments received will be provided to the Contractor for analysis and incorporation into the final guidance documents, as appropriate.

3.0 Specific Tasks

For ease of reference, following task 3.3 the remaining tasks are listed separately under the headings of Provisional Voting and Voter Identification Requirements. It is anticipated that the work on these two topics will be conducted essentially concurrently.

3.1 Update the project work plan, as required. The Contractor shall update and deliver the 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 updated Project Plan shall be formally briefed to the EAC Project Manager and lead Commissioner.

3.2 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 shall also be provided.

3.3 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

3.4 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.

Topics of particular interest include the following:
- How did States prepare for the onset of the HAVA provisional ballot requirement?
- How did this vary between States that had previously had some form of provisional ballots and those that did not?
- How did litigation affect the implementation?
- How effective was provisional voting in enfranchising qualified voters?
- Did State and local processes provide for consistent counting of provisional ballots?
- Did local election officials have a clear understanding of how to implement provisional voting?

3.5 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.

3.6 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 and Standards Board. EAC will convene a meeting or teleconference of the Boards for the discussion of this document. The Contractor shall provide the document in advance and participate in the meeting to answer questions and

record comments.

3.7 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, the Board of Advisors and the Standards Board and prepare the draft guidance for publication in the Federal Register by the EAC.

3.8 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. EAC will handle publicity for the meeting.

3.9 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

3.10 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.

3.11 Convene a half day public hearing on the topic of voter identification requirements. This hearing should occur early in the research process as an informational hearing where all points of view on this topic can be aired. 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.

3.12 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 4.11, 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.

3.13 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 and Standards Board. EAC will convene a meeting or teleconference of the Boards 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.

3.14 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, the Board of Advisors and the Standards Board and prepare the draft guidance for publication in the Federal Register by the EAC.

3.15 Arrange a second 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. EAC will handle publicity for the hearing.

3.16 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.

4.0 Contract Type. The contract type will be Time and Materials in the amount of $560,002.00.

5.0 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. Some travel will be required.

6.0 Period of Performance. The period of performance is from date of award until December 30, 2005.

7.0 Schedule of Deliverables:

1. Updated project plan – 10 days after contract award
2. Progress reports – monthly
3. Briefings – as required
4. Analysis report on provisional voting, including compendium of legislation, procedures and litigation - TBD
5. Alternatives report on provisional voting – TBD

6. Preliminary draft guidance on provisional voting - TBD
7. Draft guidance on provisional voting for publication – 9/2005
8. Public hearing on draft guidance – 30 days after publication
9. Final guidance on provisional voting for EAC adoption – 10/2005
10. Analysis report on voter identification requirements, including compendium of legislation, procedures and litigation – TBD
11. Public hearing on voter identification requirements – TBD
12. Summary of voter identification requirements hearing - TBD
13. Alternatives report on voter identification requirements - TBD
14. Preliminary draft guidance on voter identification requirements - TBD
15. Draft guidance on voter identification requirements for publication – 11/2005
16. Public hearing on draft guidance – 30 days after publication
17. Final guidance on voter identification requirements to EAC for adoption – 12/2005

8.0 Inspection and Acceptance Criteria. Final inspection and acceptance of all work performed, reports, and other deliverables will be performed at the offices of the EAC. The Contracting Officer's Representative for this effort will be Karen Lynn-Dyson. She will review and approve all work on behalf of the Commission.

9.0 Invoicing. Invoices may be submitted monthly using Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal. Invoices shall be mailed to the attention of Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington D.C. 20005.

10.0 Accounting and Appropriation Data: Funds in the amount of $560,002.00 are available for this task order.

11.0 General Provisions:

11.1 *Proposal Incorporated.* The Contractor's proposal is incorporated by reference into the statement of work.

11.2 *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The EAC reserves the right to inspect and review any products or services that have been tendered for acceptance. The EAC may require correction or re-performance of nonconforming items at no increase in contract price. The EAC must exercise its post-acceptance rights within ten (10) days after the defect was discovered or should have been discovered.

11.3 *Contract Terms.* Should there be a conflict between the contract clauses included in this document and the "Purchase Order Terms and Conditions" on the back of GSA Form 300, which is used to record contract financial

data, the contract clauses in this document shall take precedence.

11.4 *Changes*. Changes in the terms and conditions of this Contract may be made only by written agreement signed by authorized representatives of both parties.

11.5 *Disputes*. This Contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any dispute arising under the Contract.

11.6 *Excusable Delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the EAC, in writing, as soon as possible after the beginning of an excusable delay. The Contractor shall explain the basis for the excusable delay, and correct the problem as soon as possible. The Contractor shall notify the EAC, in writing, at the end of the delay.

11.7 *Other compliances*. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

11.8 *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409, relating to whistle blower protections; 49 U.S.C. 40118, Fly American, and 41 U.S.C. 423 relating to procurement integrity.

11.9 *Limitation of Government Liability*. The Contractor is not authorized to make expenditures or incur obligations exceeding the total amount allocated to the contract. The Contractor is required to notify the Contracting Officer's Representative when 75% of funding has been obligated.

11.10 *Termination for convenience*. The EAC, by written notice, may terminate this contract without fault, in whole or in part, when it is in the best interest of the government. In the event of contract termination for convenience, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulations in effect on the date of this contract.

Edgardo Cortes /EAC/GOV
10/25/2006 03:20 PM

To Margaret Sims/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie
bcc
Subject Re: Question-Voting Fraud-Voter Intimidation Report

Gavin asked me about this issue yesterday and I also suggested a meeting/call between all of us to discuss this so there is no confusion about where things are. Obviously tomorrow is out, but does everyone want to have a call on Friday about this? Let me know what times everyone is available and I can reserve the small conference room. Thanks.

Edgardo Cortés
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave. NW, Ste. 1100
Washington, DC 20005
866-747-1471 toll free
202-566-3126 direct
202-566-3127 fax
ecortes@eac.gov
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV
10/25/2006 11:59 AM

To Thomas R. Wilkey/EAC/GOV@EAC
cc ecortes@eac.gov
Subject Re: Question-Voting Fraud-Voter Intimidation Report

Tom:

I sent the consolidated draft of the report last week (minus the Nexis and case law charts) to the lawyers (with a cc: to you), along with the following comments:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.
- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper segueways. I don't know if we should leave it as is, or insert them where needed.

The only comments I've received so far were from Gavin, who said, "I would put forth one point at the outset... if we are creating an EAC report, let create an EAC report. Tova and Job contract employees... I do not see why we can't use all, some or none of their work without footnote or comment."

The series of supporting charts can be found in the shared drawer under **T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION \Report\Consolidated Copy** in the subfolders marked **Case Charts** and **Nexis Charts**. I continue to work on the formatting of these charts, but at least you and Edgardo can access them. (I would have attached copies to this message, but it would involve too many files.)

We may want to schedule a teleconference on this with the attorneys and Jeannie.

I hope you are feeling better. --- Peggy

Thomas R. Wilkey/EAC/GOV

10/25/2006 10:46 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Question

Hi Peggy;
Sorry I missed you yesterday when you were here and hope you are beginning to feel better.
As you know the Voter Fraud and Intimidation Report is causing quite a stir.
Can you give me some ball park timeframe for how long it may take to wrap up our review and get a report to the Commissioners
Is their anything I can do to assist with getting you some help on this.
I know you have other things on your mind but I need to find a way to wrap this up soon.
Also I believe that their were some charts of some sort that were not included in the report we got from Tova and Job, are they available for Edgardo to find so that I may take a look at this.
Thanks so much and hope things are getting better for you.
Tom

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100

Washington, DC 20005
(202) 566-3109 phone
TWilkey@eac.gov

Paul DeGregorio /EAC/GOV
10/23/2006 10:15 PM

To Gracia Hillman/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC
bcc
Subject Re: The Fraud "Report"

History: This message has been replied to

I think it's good idea, especially considering the media coverage and controversy. I spoke with Todd Rokita today and he was not happy at all about what he has read and feels the status report was misleading as the working group session held the day after the report was given came to different conclusions.

We also should make mention on Thursday about the 4th anniversary of HAVA, which is this Friday. It could give us an opportunity to talk about the positive things that have happened in election reform since its passage. Much of the talking points our media advisors drafted talk about this.

Sent from my BlackBerry Wireless Handheld
Gracia Hillman
----- Original Message -----

From: Gracia Hillman
Sent: 10/23/2006 09:13 PM
To: Paul DeGregorio; Thomas Wilkey; Donetta Davidson
Cc: Juliet Hodgkins; Jeannie Layson
Subject: The Fraud "Report"

I am recommending that we use Thursday's meeting, a public forum, to be on the record about this report.

My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

Please let me know what you think about this suggestion. Thanks.

Sent from my BlackBerry Wireless Handheld

Gracia Hillman /EAC/GOV
10/23/2006 09:13 PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, "Donetta Davidson" <Ddavidson@eac.gov>
cc Juliet E. Thompson/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>
bcc
Subject The Fraud "Report"

I am recommending that we use Thursday's meeting, a public forum, to be on the record about this report.

My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

Please let me know what you think about this suggestion. Thanks.

Sent from my BlackBerry Wireless Handheld

Gracia Hillman /EAC/GOV
10/17/2006 01:12 PM

To Jeannie Layson/EAC/GOV@EAC
cc "Sheila Banks" <sbanks@eac.gov>
bcc
Subject Re: NEED APPROVAL: Brennen Cen. letter

The letter looks fine to me.

Sent from my BlackBerry Wireless Handheld

---- Original Message -----
From: Jeannie Layson
Sent: 10/17/2006 10:06 AM
To: Paul DeGregorio; Gracia Hillman; Donetta Davidson
Cc: Thomas Wilkey; Margaret Sims; Karen Lynn-Dyson; Juliet Hodgkins; Gavin Gilmour; Bryan Whitener
Subject: NEED APPROVAL: Brennen Cen. letter

Commissioners,
I have not received input from everyone regarding the attached letter. It is a response to Wendy Weiser of the Brennan Center, who requested the staff voter fraud status report and the provisional voting draft report, both of which were presented to the Standards Bd. and the Bd. of Adv. at the May meeting. She also requested the draft voter ID report, which was not released at the May meeting. If possible, I'd like to get your input by the end of the day. The letter would go out under Tom's signature. Thank you.

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

Paul DeGregorio /EAC/GOV
10/17/2006 10:14 AM

To Jeannie Layson/EAC/GOV@EAC
cc
bcc
Subject Re: NEED APPROVAL: Brennen Cen. letter

The letter is fine with me.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Jeannie Layson
Sent: 10/17/2006 10:06 AM
To: Paul DeGregorio; Gracia Hillman; Donetta Davidson
Cc: Thomas Wilkey; Margaret Sims; Karen Lynn-Dyson; Juliet Hodgkins; Gavin Gilmour; Bryan Whitener
Subject: NEED APPROVAL: Brennen Cen. letter

Commissioners,
I have not received input from everyone regarding the attached letter. It is a response to Wendy Weiser of the Brennan Center, who requested the staff voter fraud status report and the provisional voting draft report, both of which were presented to the Standards Bd. and the Bd. of Adv. at the May meeting. She also requested the draft voter ID report, which was not released at the May meeting. If possible, I'd like to get your input by the end of the day. The letter would go out under Tom's signature. Thank you.

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

Deliberative Process Privilege

October 17, 2006

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

Dear Ms. Wieser:

Thank you for your request for information regarding U.S. Election Assistance Commission (EAC) research projects on voter fraud and voter intimidation, provisional ballots and voter identification.

The status report on voter fraud and voter intimidation, prepared by EAC staff, and the draft report on provisional voting, prepared by the Eagleton Institute of Politics and the Moritz College of Law, are enclosed. EAC personnel are in the process of drafting a report about voter identification. The report will be made available upon completion.

Status documents about voter fraud and voter intimidation and provisional voting were presented to the EAC's Standards Board and Board of Advisors at a public meeting held in May 2006. Neither of these documents were final EAC reports. Per the Help America Vote Act (HAVA), the EAC works with its advisory boards to gather input on activities, including research projects. After discussing the provisional voting research with our advisory boards, they requested further research and clarification and noted that some of information was inaccurate or incomplete. Please see the attached resolutions passed by both entities outlining their concerns. As such, EAC is currently reviewing the draft report on provisional voting to address the concerns of the agency's advisory boards.

As a small agency of only 23 employees, including four commissioners, it is necessary for EAC to contract with third parties and experts to conduct research. The information provided by third parties is used by staff to develop EAC final policy or reports. No documents, drafts or third party recommendations submitted to EAC constitute official EAC policy or opinion and should not be identified or referred to as such.

Please note that our Standards Board and Advisory Board meetings are open to the public and are publicized on the EAC website at www.eac.gov and posted in the Federal Register.

Thank you for your interest, and let us know if we can be of further assistance.

Sincerely,

Tom Wilkey
Executive Director

Margaret Sims /EAC/GOV
10/13/2006 04:40 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov
bcc
Subject Fw: Don't Believe Everything You Read

Jeannie:

Attached is the email I sent to Tova and Job, and Job's response. (I have not yet heard back from Tova.)
--- Peggy

—— Forwarded by Margaret Sims/EAC/GOV on 10/13/2006 04:37 PM ——

"Job Serebrov" [redacted]
10/13/2006 03:26 PM

To psims@eac.gov, wang@tcf.org
cc
Subject Re: Don't Believe Everything You Read

Peg:

We saw both the USA Today article and a similar thing was reported on Rush Limbaugh's show naming both of us. I had a talk this morning with folks at the EAC. I told them at this point there needs to be a press release sent out by the Chairman saying just what you stated. This is the only way to rehabilitate the work we did, the Chairman's credibility, and our reputations. I also fear that if this is not done the EAC will begin to receive calls from Congressman and Senators regarding the "report" and its effect on voter ID requirements.

Peg, up to now Tova and I have refused to speak with the press at all out of respect for the EAC and its mission. We both stand by our work and its conclusions. We both also feel that if a statement (as well phrased as you did in this e-mail clarifying the issue) is not forthcoming from the Chairman then I will have to correct this error with the Press. I explained this in my conversation this morning with the EAC.

Tova and I worked hard to produce a correct, accurate and truthful report. I could care less that the results are not what the more conservative members of my Party wanted. Neither one of us was willing to conform results for political expediency. I think its important for me to note that I was very impressed with Tova's members of the Working Group and I can't say enough about Tova's partnership effort in this endeavor. While neither one of us really care about outside opinions, we do care that the Chairman was quoted or misquoted in a way that would disparage our year-long effort and all of the tax payer money that went into it. For this reason, we believe that a press release clarifying the situation is necessary from either the Chairman or from me.

Regards,

Job

psims@eac.gov wrote:

Tova and Job:

I am home recuperating, but see that in my absence, a USA Today article has gotten everyone stirred up. The report to which the article refers is only the status report on the voting fraud-voter intimidation research project that was delivered to our Standards Board and Board of Advisors last spring. I provided a copy of this document to both of you. but have attached another copy for your information. This document is subject to public release because it was presented at a pubic meeting.

Due to internal resource allocation problems, your final report has not yet been reviewed by the Commissioners. It is considered a working document (not subject to public release) until it has completed the review process and the Commissioners have agreed to release it. There has been no attempt by the Commission to hold up the report. I bear responsibility for any delays in moving it along. Please be reassured that we would not release your report without letting you know.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
Fax: 202-566-3127
email: psims@eac.gov

Donetta L. Davidson/EAC/GOV
06/05/2006 08:54 AM

To Paul DeGregorio
cc

I told him we would call today
---- Forwarded by Donetta L. David

"Todd Rokita"
[redacted]
06/02/2006 09:38 PM

@sos.in.gov

Donetta--- this is the person to whom the EAC is pay[illegible] ey to perform dispassionate research on voter fraud? No wonder she has concluded for all of us that voter fraud (in person) really does not exist, except for maybe a few isolated places in the Midwest. If her report sees the light of day, I can almost guaranty problems. The fact that the report may have a co-writer does not solve this problem. She should not even be paid. There is a clear agenda behind her conclusions. I believe the credibility of the EAC is in question with your decision to hire this person and allow her to report on behalf of the EAC on either election fraud or voter intimidation. I would like a response from the Chairman that addresses this article. Thanks

---

Rumble in the Desert

Civil rights groups are challenging Arizona's Prop 200, which endangers voting rights for citizens.

Tova Andrew Wang
June 01, 2006

Article created by The Century Foundation.

Without a lot of fanfare, a very important lawsuit was filed last week by the Lawyers Committee for Civil Rights and other groups in Arizona. Finally, two years after the passage of the quite pernicious Prop 200, groups are finally taking serious action to combat it.

Basically an anti-immigrant measure, Prop 200 set out a bunch of restrictions on access to services for immigrants. However, with respect to voting rights, Prop 200 set up a situation blocking the right to vote for many *citizens* by requiring every person registering to vote to prove citizenship.

As the Lawyer's Committee describes it, Proposition 200 requires that that counties

reject any voter registration application that does not include satisfactory proof of citizenship, such as a copy of the applicant's birth certificate, passport, a driver's license or non-operating identification license, but only if issued after October 1, 1996, a tribal identification card or naturalization documents. This even applies to voters who must re-register simply because they moved across county lines.

This measure is at least as damaging as many of the voter identification laws being passed and contemplated across the country. This stops someone from being part of the process before they've even gotten to square one. As I have repeatedly discussed with respect to ID laws, many voters are unlikely to have the required documentation and efforts to obtain the documentation will take time and money, therefore amounting to an unconstitutional poll tax.

Ironically, it has proven to be eligible voters who have been caught in the snare of this act. Last year in Maricopa County, home to Phoenix, more than 10,000 people trying to register were rejected for being unable to prove their citizenship. A spokeswoman for the recorder's office said most are probably U.S. citizens whose married names differ from the ones on their birth certificates or who have lost documentation. In Pima County, home to Tucson, 60 percent of those who tried to register initially could not. The elections chief said that all appeared to be U.S. citizens, but many had moved to Arizona recently and couldn't get their birth certificates or passports.

Moreover, Prop 200 is based on the idea that noncitizens are coming to the polling place and voting illegally. The premise is false. There is no evidence of any number of immigrants knowingly voting in the past in Arizona, and certainly it would seem unlikely when the last thing immigrants want to do in these times is draw official attention to themselves.

Finally, as the lawsuit persuasively argues, the measure also makes it virtually impossible for groups to conduct voter registration drives in Arizona. How many people go to the supermarket with their birth certificate?

The recent decision in Indiana upholding its draconian ID bill and the intolerance toward immigrants being displayed right now makes me worry about how the Arizona courts will respond. They upheld the Proposition in another context once before. But anyone who cares about the right to vote—for qualified, U.S. citizens—should hope that the law is struck down as the unconstitutional and anti-democratic measure it is.

Tova Andrea Wang is Democracy Fellow at The Century Foundation.

David R. Maxwell

Campaign Assistant

Todd Rokita

Secretary of State Reelection Campaign

47 South Meridian Street, Suite 200

Indianapolis, Indiana 46204

[redacted]

[redacted]

dmaxwell@indgop.org

014869

Juliet E. Hodgkins/EAC/GOV
11/17/2006 01:40 PM

To "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Thomas R.
cc Bert A. Benavides/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Matthew Masterson/EAC/GOV@EAC, Gavin S.
bcc

Subject Draft Voting Fraud and Voter Intimidation Report

History: This message has been replied to.

Commissioners and Tom,

I have attached a draft version of the EAC Voting Fraud and Voter Intimidation report. **Please have your comments ready no later than Tuesday , Nov. 28, COB, so that I will be prepared to discuss them at our briefing on Wednesday , Nov. 29 at 10:30.**

You will note that there are appendixes referenced in the report. These documents are quite lengthy. Thus, I did not attach them to this email. If, however, you want to read the documents, DeAnna has access to them in my absence and can either email them to you or print them for you.

I think that the report is fairly self-explanatory. However, there are two questions that we need to address and that the Commissioners need to comment on:

1. The consultants provided summaries of articles, books, and reports that they read, as well as summaries of the interviews that they conducted. Peggy created two tables summarizing the consultants' summaries of books, article and reports as well as interviews. We need to make a determination of which summaries we want to attach as appendixes. The only issue that I am aware of (and I have a question pending to Peggy about the quality of these summaries) is a significant disagreement over the summaries of interviews with Craig Donsanto and John Tanner of the Dept. of Justice. They disagree with the characterization given by the consultants to what they said in the interview. Obviously, this matter would have to be resolved if we decide to use the consultants' summaries.

2. Tom and I had a conversation with Tova and Job about the fact that we are going to issue a report. Tova was quite insistent about being able to see the report before it is released. I am NOT inclined to give her a copy of the report before it is released. Neither Tova nor Job are still on contract with the EAC. Thus, they are just like any other member of the public. I believe that if we release it to them, then we may have a significant problem withholding the document from others that may ask for it via FOIA request. I believe that the course of action should be to release it to all persons simultaneously.

Happy reading and Happy Thanksgiving!

Voter Fraud & Intimidation Report.doc

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

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,[1] who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting

[1] Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".

fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of the Secretary of State
Member, EAC Standards Board

J.R. Perez
Guadalupe County Elections Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to National Republican Campaign Committees and Republican candidates

Robert Bauer
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia
National Counsel for Voter Protection, Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St Louis, Missouri
National Counsel to the American Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

Technical Advisor:
Craig Donsanto
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

014872

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

Articles and Reports

- People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.
- Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.
- National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001

- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.

- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html

- People for the American Way, Election Protection 2004, Election Protection Coalition, at http://www.electionprotection2004.org/edaynews.htm

- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

014874

- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voting fraud Threatens Our Democracy*, Encounter Books, 2004.

- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as

"Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
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These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,

voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix "4".

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,

- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

New Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

> **Fraud**, n. **1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black's Law Dictionary, Eighth Edition, p. 685.

"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to

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vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

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The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

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- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

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- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not "election crimes," and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not "election crimes."

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such

activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With " MyVote1" Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and "monitor field reports" from Election Day.

Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

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Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the "ease of commission" and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

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Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition